The EU double standards on human rights

Israel vs Russia

The utmost care has been taken in compiling this summary from various sources of various reports from media, politics and case law by IFUD of Human Rights according to the principle of thematic approach.Thematic approach is a method that emphasizes the selection of one specific theme in which the various subtopics are strategically linked and integrated within one research theme by the researcher. Intended for science, politics and schools for non-commercial use.

IFUD of Human Rights condemns the Hamas terrorist attack. Hamas carried out a terrorist attack in Israel on October 7, 2023, killing approximately 1,200 people. Israel has a right to self-defence under international law even where Palestine is not a State. Israel's right of self-defence is limited by principles of necessity and proportionality.

PRESS RELEASES | SPECIAL PROCEDURES

States and companies must end arms transfers to Israel immediately or risk responsibility for human rights violations: UN experts

20 June 2024

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GENEVA (20 June 2024) – The transfer of weapons and ammunition to Israel may constitute serious violations of human rights and international humanitarian laws and risk State complicity in international crimes, possibly including genocide, UN experts said today, reiterating their demand to stop transfers immediately.

In line with recent calls from the Human Rights Council and the independent UN experts to States to cease the sale, transfer and diversion

of arms, munitions and other military equipment to Israel, arms manufacturers supplying Israel – including BAE Systems, Boeing, Caterpillar, General Dynamics, Lockheed Martin, Northrop Grumman, Oshkosh, Rheinmetall AG, Rolls-Royce Power Systems, RTX, and ThyssenKrupp – should also end transfers, even if they are executed under existing export licenses.

"These companies, by sending weapons, parts, components, and ammunition to Israeli forces, risk being complicit in serious violations of international human rights and international humanitarian laws," the experts said. This risk is heightened by the recent decision from the International Court of Justice ordering Israel to immediately halt its military offensive in Rafah, having recognised genocide as a plausible risk, as well as the request filed by the Prosecutor of the International Criminal Court seeking arrest warrants for Israeli leaders on allegations of war crimes and crimes against humanity. "In this context, continuing arms transfers to Israel may be seen as knowingly providing assistance for operations that contravene international human rights and international humanitarian laws and may result in profit from such assistance."

An end to transfers must include indirect transfers through intermediary countries that could ultimately be used by Israeli forces, particularly in the ongoing attacks on Gaza. The UN experts said that arms companies must systematically and periodically conduct enhanced human rights due diligence to ensure that their products are not used in ways that violate international human rights and international humanitarian laws.

Financial institutions investing in these arms companies are also called to account. Investors such as Alfried Krupp von Bohlen und Halbach- Stiftung, Amundi Asset Management, Bank of America, BlackRock, Capital Group, Causeway Capital Management, Citigroup, Fidelity Management & Research, INVESCO Ltd, JP Morgan Chase, Harris Associates, Morgan Stanley, Norges Bank Investment Management, Newport Group, Raven'swing Asset Management, State Farm Mutual Automobile Insurance, State Street Corporation, Union Investment Privatfonds, The Vanguard Group, Wellington and Wells Fargo & Company, are urged to take action. Failure to prevent or mitigate their business relationships with these arms manufacturers transferring arms to Israel could move from

being directly linked to human rights abuses to contributing to them, with repercussions for complicity in potential atrocity crimes, the experts said.

“Arms initiate, sustain, exacerbate, and prolong armed conflicts, as well as other forms of oppression, hence the availability of arms is an essential precondition for the commission of war crimes and violations of human rights, including by private armament companies,” said the experts.

They said the ongoing Israeli military assault is characterised by indiscriminate and disproportionate attacks on the civilian population and infrastructure, including through extensive use of explosive and incendiary weapons in densely populated areas, as well as in the destruction and damage of essential and life-sustaining essential civilian infrastructure, including housing and shelters, health, education, water and sanitation facilities. These attacks have resulted in more than 37,000 deaths in Gaza and 84,000 injured. Of these deaths and injuries, an estimated 70 per cent are women and children. Today, children in Gaza are the largest group of amputee children in the world due to grave injuries sustained in the war.
These operations have also resulted in severe environmental and climate damages.

“The imperative for an arms embargo on Israel and for investors to take decisive action is more urgent than ever, particularly in light of states' obligations and companies' responsibilities under the Geneva Conventions, the Genocide Convention, the international human rights treaties, and the UN Guiding Principles on Business and Human Rights,” the UN experts said.

The experts paid tribute to the sustained work of journalists who have been documenting and reporting on the devastating impact of these weapons systems on civilians in Gaza, and human rights defenders and lawyers, among other stakeholders, who are dedicated to holding States and companies accountable for the transfer of weapons to Israel.

They have also engaged with States, as well as the involved businesses and investors on these issues.

The experts: Robert McCorquodale (Chair), Fernanda Hopenhaym (Vice-Chair), Pichamon Yeophantong, Damilola Olawuyi, Elzbieta Karska, Working Group on business and human rights; George Katrougalos, **Independent Expert on the promotion of a democratic and equitable international order**; **Pedro Arrojo- Agudo, Special Rapporteur on the human rights to safe drinking water and sanitation**; **Reem Alsalem, Special Rapporteur on violence against women and girls, its causes and consequences**; **Paula Gaviria Betancur, Special Rapporteur on the human rights of internally displaced persons**; **Tlaleng Mofokeng, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health**; **Michael Fakhri, Special Rapporteur on the right to food; Morris Tidball-Binz, Special Rapporteur on extrajudicial, summary or arbitrary executions; Mary Lawlor, Special Rapporteur on the situation of human rights defenders; Cecilia M Bailliet, Independent Expert on human rights and international solidarity**; **Ms. Margaret Satterthwaite, Special Rapporteur on the independence of judges and lawyers**; **Farida Shaheed, Special Rapporteur on the right to education**; **Carlos Salazar Couto (Chair- Rapporteur), Michelle Small, Ravindran Daniel, Jovana Jezdimirovic Ranito, Sorcha MacLeod, Working Group on the use of mercenaries**; **Francesca Albanese, Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967**; **Ben Saul, Special Rapporteur on the promotion and protection of human rights while countering terrorism; Dorothy Estrada Tanck (Chair), Laura Nyirinkindi (Vice-Chair), Claudia Flores, Ivana Krstić, and Haina Lu, Working group on discrimination against women and girls; Astrid Puentes, Special Rapporteur on the human right to a clean, healthy and sustainable environment**; **Attiya Waris, Independent Expert on the effects of foreign debt**; **Marcos A. Orellana, Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of**

hazardous substances and wastes; **Balakrishnan Rajagopal**, **Special Rapporteur on the right to adequate housing**

The Special Rapporteurs, Independent Experts and Working Groups are part of what is known as the **Special Procedures** of the Human Rights Council. Special Procedures, the largest body of independent experts in the UN Human Rights system, is the general name of the Council's independent fact-finding and monitoring mechanisms that address either specific country situations or thematic issues in all parts of the world. Special Procedures' experts work on a voluntary basis; they are not UN staff and do not receive a salary for their work. They are independent from any government or organisation and serve in their individual capacity.

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Human rights are universal, and when the EU and its member states selectively apply human rights and international treaties, there is a huge problem. From that moment on, human rights are only a political instrument and their content is empty phrases.

HUMAN RIGHTS

The European Union is committed to supporting democracy and human rights in its external relations, in accordance with its founding principles of liberty, democracy and respect for human rights, fundamental freedoms and the rule of law. The EU seeks to mainstream human rights concerns into all its policies and programs, and has different human rights policy instruments for specific actions — including financing specific projects through its financing instruments.

LEGAL BASIS

– Article 2 of the Treaty on European Union (TEU): EU values. The EU's founding values are 'human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities';

– Article 3 TEU: EU objectives. In 'its relations with the wider world', the EU contributes to the 'eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter';

– Article 6 TEU: the Charter of Fundamental Rights and the European Convention on Human Rights. Although the Charter of Fundamental Rights of the European Union (Article 6(1)) only explicitly refers to the implementation of Union law, the EU's institutions and bodies and its Member States must also respect the Charter in the EU's external relations. Countries joining the EU must also comply with the Charter. Article 6(2) requires the EU to accede to the European Convention on Human Rights (4.1.2);

– Article 21 TEU: principles inspiring the Union's external action. These principles are democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, equality and solidarity, and respect for the principles of the United Nations Charter of 1945 and international law. In Article 21, the EU endorses the principle of the 'indivisibility of human rights and fundamental freedoms', committing itself to consider economic and social rights to be as important as civil and political rights;

– Article 205 of the Treaty on the Functioning of the European Union (TFEU): general provisions on the Union's external action. This article determines that the EU's international actions are to be guided by the principles laid down in Article 21 TEU.

EU HUMAN RIGHTS POLICY

In 2012, the Council adopted a Strategic Framework on Human Rights and Democracy, accompanied by an action plan to implement the framework. The framework defines the principles, objectives and priorities for improving the effectiveness and consistency of EU policy over the next 10 years. These principles

include mainstreaming human rights into all EU policies (as a 'silver thread'), including when internal and external policies overlap, and adopting a more tailored approach. Following a proposal from the Commission and the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy (VP/HR), in November 2020 the Council adopted the third EU Action Plan on Human Rights and Democracy. It sets out the EU's ambitions and priorities for the 2020-2024 period, and has been extended to 2027 to align with the time frame of the multiannual financial framework. It is structured around five main areas of action:

– Protecting and empowering individuals;
– Building resilient, inclusive and democratic societies;
– Promoting a global system for human rights and democracy;
– New technologies: harnessing opportunities and addressing challenges;
– Delivering by working together.

The Council has adopted a series of thematic guidelines on human rights. They provide practical instructions for EU representations around the world on:

– Action against the death penalty;
– Dialogues on human rights;
– The rights of the child;
– Action against torture and other cruel treatment;
– Protecting children in armed conflicts;
– Protecting human rights defenders;
– Complying with international humanitarian law;
– Combating violence against women and girls;
– Promoting freedom of religion and belief;
– Protecting the rights of LGBTI people;
– Promoting freedom of expression both online and offline;
– Non-discrimination in external action;
– Safe drinking water and sanitation.

The EU's human rights and democracy country strategies follow a bottom-up approach aimed at integrating EU human rights guidelines and priorities into a single, coherent policy document. They are adapted to each country and establish goals for a period of three years.

The EU regularly includes human rights in political dialogues with non-EU countries or regional organizations. It also holds dialogues and consultations specifically dedicated to human rights with some 60 countries.

Bilateral trade agreements and the various association and cooperation agreements between the EU and non-EU countries or regional organizations include a human rights clause defining respect for human rights as an 'essential element'. This clause

serves as an access point for engagement and dialogue, but also as a basis for imposing appropriate measures, such as reducing or suspending cooperation, in the event of grave violations of human rights and democratic principles. Incentives for ratifying and implementing human rights and labor rights conventions are provided for in the preferential EU trade schemes for developing countries (5.2.3).

A strong conditionality mechanism has been established for enlargement countries (5.5.1). Before joining the EU, these countries have to develop stable institutions guaranteeing democracy, the rule of law, human rights and respect for and the protection of minorities, a process actively supported by the EU. The European Neighborhood Policy (5.5.5) is also based on common values of democracy, the rule of law and respect for human rights. The EU supports partner countries in implementing reforms and applies a 'more-for-more' approach (more integration and money to reward progress).

EU election observation missions also aim to improve human rights by discouraging intimidation and violence during elections and strengthening democratic institutions.

The EU promotes human rights through its participation in multilateral forums such as the UN General Assembly's Third Committee, the UN Human Rights Council, the Organization for Security and Co-operation in Europe and the Council of Europe. The EU also actively promotes international justice, for example through the International Criminal Court.

With a budget of EUR 1.511 billion allocated for the 2021-2027 period, the thematic program on human rights and democracy under the Neighbourhood, Development and International Cooperation Instrument – Global Europe mainly supports and protects civil society actors that promote human rights and democracy. An important feature of this instrument is that the consent of the government of the partner country is not necessary. In addition, the EU has committed to progressively integrating a rights-based approach into all of its development programmes, based on a toolbox developed by the Commission in 2014, and updated in 2021.

In December 2020, the Council adopted a regulation establishing a global human rights sanction regime. It allows the EU to target individuals, entities and bodies – including state and non-state actors – responsible for, involved in or associated with serious human rights violations and abuses worldwide. On 22 March 2024, in the light of the ongoing Russian war of aggression against Ukraine and the death of Alexei Navalny, the Council imposed restrictive measures against an additional 33 individuals and 2 entities. As of April 2024, the Council has imposed restrictive measures (asset freezes and, where relevant, travel bans) on a total of 116 individuals and 33 entities.

In the light of increasing evidence and awareness of human rights violations occurring in global value chains, since February 2022 the EU co-legislators have been working on a directive on corporate sustainability due diligence. This directive will legally require companies to identify and, where necessary, prevent, end or mitigate adverse impacts of their activities on human rights and the environment. The directive was adopted by Parliament and the Council and entered into force in July 2024.

A complementary regulation prohibiting products made with forced labor on the EU market entered into force in December 2024.

An annual report on human rights and democracy in the world, prepared by the VP/ HR and adopted by the Council, provides an overview of the human rights situation in the world, as well as of the EU's actions during the year.

ACTORS

The European Council defines the EU's strategic interests and the general guidelines of the common foreign and security policy (CFSP) (5.1.1).

The Foreign Affairs Council generally deals with human rights issues related to the CFSP or the EU's trade or development policies. The Council's Human Rights Working Party, which carries out preparatory work for high-level discussions and decisions on human rights issues, is composed of human rights experts from the Member States and representatives from the European External Action Service (EEAS) and the Commission.

Every EU delegation has a human rights 'focal point'. The EU delegations have a key role in developing and implementing the human rights and democracy strategies for each country, preparing human rights dialogues, engaging with human rights defenders and civil society, and identifying priorities for EU financial assistance.

The Commission negotiates international agreements, oversees the enlargement process and neighborhood policy, and manages development programs and financing instruments (in close cooperation with the EEAS).

The role of the EU Special Representative for Human Rights is to enhance the effectiveness and visibility of EU human rights policy. The special representative has a broad, flexible mandate and works closely with the EEAS.

Parliament contributes to the development of the EU's policies and monitors the work of the other EU institutions.

Under Articles 207 and 218 TFEU, most international agreements need Parliament's consent to enter into force. For example, in 2011, Parliament blocked the textile protocol to the Partnership and Cooperation Agreement between the EU and Uzbekistan, mainly on the grounds of child labor issues. It only gave its consent in 2016 following significant improvements in the use of child and forced labor.

Article 36 TEU obliges the VP/HR to consult Parliament on the main aspects and basic choices of the CFSP, and to inform it on the evolution of those policies. Parliament may ask questions or make recommendations to the Council or the VP/HR.

Parliament's resolutions aim to raise awareness of human rights abuses, support human rights defenders and shape the EU's human rights policy through concrete policy proposals. Resolutions may be a part of the legislative process, an outcome of parliamentary committees' own-initiative reports, or the result of the urgency debates that usually take place on the Wednesday of each Strasbourg plenary session to highlight flagrant violations of human rights across the world. Parliament's annual resolution on human rights and democracy in the world and the European Union's policy on the matter analyzes the achievements of the EU's policy and the challenges facing it.

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Parliament's Subcommittee on Human Rights (DROI), attached to the Committee on Foreign Affairs (AFET), is responsible for issues concerning democracy, the rule of law, human rights – including the rights of minorities – in non-EU countries and the principles of international law, and for ensuring coherence between all the EU's external policies and its human rights policy. The subcommittee also handles the day-to-day management of human rights files, while its delegations regularly visit relevant countries and institutions. The subcommittee monitors the follow-up to Parliament's urgency resolutions and holds frequent exchanges with the EEAS about the EU's human rights dialogues.

Human rights issues in the EU's external relations are also dealt with by the following committees: the Committee on Foreign Affairs (AFET), the Committee on International Trade (INTA), the Committee on Development (DEVE) and the Committee on Women's Rights and Gender Equality (FEMM). Human rights are equally an essential element of the work of Parliament's standing delegations, which interact with non-EU parliaments bilaterally and in the context of parliamentary assemblies.

Thanks to its budgetary powers (under Article 14 TEU and Article 310(1) TFEU), Parliament has a say in the allocation of funds to Global Europe and other financing instruments used for the promotion of human rights. Furthermore, Parliament is co-legislator for the external financing instruments.

Every year, Parliament awards the Sakharov Prize for Freedom of Thought to human rights activists around the world. On October 17, 2024 María Corina Machado and President-elect Edmundo González Urrutia won the Sakharov Prize, in recognition of their leadership of the Venezuelan opposition. Due to threats to her life, Ms Machado addressed MEPs remotely during the ceremony in Strasbourg on 17 December 2024, while her daughter and Mr González received the prize in person. The 2023 Sakharov Prize was awarded to Jina Mahsa Amini and the Woman, Life, Freedom Movement in Iran. The 2022 laureates were the good people of Ukraine, represented by their president, elected leaders and civil society. In 2021, the Sakharov Prize was awarded to Alexei Navalny, Russia's most prominent opposition figure, known for his fight against corruption and human rights abuses. Previous laureates include Nelson Mandela, Malala Yousafzai, Raif Badawi and the democratic opposition in Belarus. Parliament has created the Sakharov Prize Network to support Sakharov laureates, develop contacts between them and encourage joint activities.

Parliament promotes human rights as part of its broader activities to support democracy, which include election observation, pre- and post-election actions, parliamentary capacity building, mediation and dialogue on promoting democracy (5.4.2).

The President of Parliament actively supports human rights through statements and letters and by discussing human rights issues when meeting important actors.

Maciej JASTRZEBIEC-PYSZYNSKI 04/2025

Alvaro Oleart Juan Roch February 6th, 2025

The EU's double standards on Palestine and Ukraine

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Alvaro Oleart and Juan Roch argue the EU's "othering" of Palestine demonstrates clear double standards when compared to Europe's treatment of Ukraine.

Ursula von der Leyen promised a "geopolitical" European Commission 2019. She did not disappoint. Beyond the impact of COVID-19, von der Leyen's time in office has been marked by two acute crises: the Russian invasion of Ukraine in February 2022 and Israel's large-scale military offensive on Palestine following the deadly attacks perpetrated by

Hamas on October 7, 2023.

Although these are not entirely symmetrical conflicts and have their own political and historical particularities, there are strong similarities between them. They both feature a militarily powerful country (Russia and Israel) attacking a neighboring nation (Ukraine and Palestine) with which it has historically unequal relations (which may even be conceived of as colonial).

However, despite these similarities, the EU's foreign policy response has been very different, as we detail in a new study. To fully understand the EU's positioning and role in this conflict, and in the face of the massacre perpetrated by Israel, it is essential to look beyond the latest ceasefire agreement and analysis its precarious situation in the new global re-equilibrium.

The garden and the jungle

The asymmetric response to both conflicts highlights the contradictions of an EU whose foreign policy remains marked by the logic of "the garden and the jungle", a racist metaphor used by Josep Borrell, High Representative for Foreign Affairs of the European Union between 2019 and 2024.

Ukraine is part of the "garden": a predominantly white and Christian community with a status close to NATO and the EU. It is part of the "European family", in von der Leyen's own words. Supported by this idea, the EU provided political support, financial assistance and even helped develop Ukraine's defense capabilities. Ukrainian President Volodymyr Zelenskyy was invited to the European Parliament several times and EU leaders (including von der Leyen and Borrell) as well as many political leaders from EU member states visited Ukraine several times as a gesture of support for the country's fight against the Russian

government.

Moreover, the EU not only supported the welcoming of millions of Ukrainian refugees but also imposed harsh sanctions against the Russian government as well as Russian companies and individuals connected to President Vladimir Putin. The latter has been singled out as responsible for “war crimes” due to attacks on hospitals and other civilian infrastructure. Indeed, in March 2023, the International Criminal Court (ICC) issued an arrest warrant against Putin for war crimes.

The ICC also issued a request for an arrest warrant for war crimes and crimes against humanity against Israeli Prime Minister Benjamin Netanyahu on November 21, 2024. However, in this case, the EU sided with Israel. Only Israeli leaders have been invited to speak in the European Parliament, and von der Leyen, together with President of the European Parliament Roberta Metsola, just visited Israel and held a joint press conference with Israeli President Isaac Herzog on October 13 2023.

Despite the large number of Palestinians killed by Israeli attacks in Gaza (and also in Lebanon and the West Bank, where settlers continue to expand), there has been little change in European foreign policy towards Israel. In March 2024, almost 200 civil society organizations called for the suspension of the EU-Israel Association Agreement, as human rights and democratic principles are an essential component of the agreement. Despite these requests, the EU continues to maintain this agreement intact.

Moreover, while the narrative on Ukraine has a broad historical perspective around Soviet imperialism, in the case of Palestine, the chronology begins on 7 October 2023. It is as if nothing had happened before the Hamas attacks. Indeed, the “othering” is evident as there is a constant denial of Palestine as a political community (often speaking

only of “Gaza”, as if it were not part of a larger nation). Terms such as “Nakba”, “genocide”, “occupation”, “colonialism” or “apartheid” do not appear in the EU narrative. In line with this, Palestinian deaths appear as the consequence of a “tragedy”, a natural disaster with no apparent human causes.

Contradictions and paralysis

While this general narrative dominates in the EU, there have been some institutional counterweights at the European level. Josep Borrell – despite the unfortunate metaphor mentioned above – has rejected von der Leyen's position on the issue. He has publicly criticized the Commission President, arguing in relation to her visit to Israel October 2023 that “von der Leyen's trip, with such a completely pro-Israeli position, without representing anyone but herself in a matter of international politics, has had a high geopolitical cost for Europe”.

He has also denounced the double standards of European foreign policy, which have led the EU to oppose the violation of human rights in some places and justify them in others. EU foreign policy must be agreed on by all member states, but Borrell, as High Representative for Foreign Affairs, played a key role in coordinating and seeking consensus. Spain, Belgium and Ireland are the states that have most positioned themselves on Borrell's side.

In December 2024, Estonian Kaja Kallas replaced Borrell in the second von der Leyen Commission, which clearly shifted further to the right. Kallas has emerged as a strong defender of Ukraine in its resistance against Russia, but she has not had the same attitude towards Palestine. The EU now appears paralyzed and unable to champion human rights coherently. It is a victim of its internal contradictions and its subordination to a global logic that it cannot or does not know how

to read – especially its relationship of dependence on the United States.

If a ceasefire is respected, the EU will probably be able to say that human rights and democracy are making headway in the face of bombs and thousands of dead civilians. The truth, beyond these proclamations, is that the EU's arguments about human rights increasingly lack credibility because they are so often used incoherently and with racist discretion. This allows those who do not really believe in human rights and democracy to use these terms to continue a massacre in the face or general confusion.

In contrast, a democratic European foreign policy would properly confront its own colonial past and present, moving beyond the logic of "the garden and the jungle", hypocrisy and double standards. It is instruction that it was South Africa, and not the EU or any European country, that took Israel to the International Court of Justice on the grounds that it was committing genocide against Palestine.

The defense of human rights cannot be limited to certain communities. If it is, the EU will further erode international law and continue to reproduce the existing hierarchy between the global North and South. Rather than counterproductively pitting the struggles of Ukrainians and Palestinians against each other, European foreign policy should find ways to articulate bonds of solidarity across all anticolonial struggles.

For more information, see the authors' accompanying article in the Journal of Common Market Studies .

Note: giv Tehsisviaewrtiscnleotthpeosoitfiotnhe authors, the of EUROPP – European Politics and Policy or the London School of Economics. Featured image credit:

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Members of the European Parliament criticize EU double standards on arrest warrants from the ICC for Israeli Prime Minister

Now more than ever, we must support the multilateral order and continue to insist on respect for the ICC's decisions,' says EU Commissioner

Melike Pala |26.11.2024 - Update: 27.11.2024

ANKARA

In a heated session on Tuesday in the European Parliament (EP), the President of the European Commission, Ursula von der Leyen, sharply criticized for her alleged silence on the arrest warrants of the International Criminal Court (ICC) for Israeli officials.

The ICC issued arrest warrants for Israeli Prime Minister Benjamin Netanyahu and his former Defense chief Yoav Gallant for war crimes and crimes against humanity in the Gaza Strip.

Israel is also being charged with genocide at the International Court of Justice for its brutal war on Gaza.

MEPs also accused the EU of applying “double standards” in its handling of international law and human rights violations.

During the meeting, which was titled "The Escalating Tensions in the Middle East, the Humanitarian Crisis in Gaza and the West Bank, the role of UNRWA in the region, the need for the release of all prisoners and the ICC arrest warrants for Israeli officials", the role of the EU in the face of the humanitarian crisis in Gaza and the occupied West Bank discussed.

On behalf of the Council of the EU, Hungarian Minister for European Affairs Janos Boka called on all parties in the Gaza Strip to maximum restraint and compliance with international humanitarian law.

Boka expressed his deep sorrow over the "unacceptably high number of civilian casualties, especially women and children", and stressed the EU's demand for an immediate ceasefire, the unconditional release of prisoners in Gaza and expanding access to humanitarian aid.

"The humanitarian situation in the Middle East is serious and the Council of the EU remains committed to addressing it as a top priority," Boka said.

On behalf of the EU High Representative Josep Borrell, Elisa Ferreira, EU Commissioner for Cohesion and Reforms, a bleak picture of the crisis in Gaza. She pointed to the unprecedented number of civilian casualties, the large displacement and the looming threat of famine.

Ferreira reaffirmed the EU's commitment to supporting international law, including support for UNRWA (the UN's Palestinian refugee agency). All this at a time when there are growing concerns about the possible its dissolution following a bill recently passed in the Israeli parliament.

"The Israeli attacks on the UN must stop," said Ferreira, who stressed the importance of defending a rules-based world order.

She reiterated the EU's support for the ICC and urged Member States to work together to enforce the ICC's decisions.

"Now, more than ever, we must support the multilateral order and continue to call for respect for and implementation of the decisions of the ICC," she added.

Criticism of the EU's approach was a major part of the debate. Liberal and left-wing MPs groups accused the EU of not applying international law consistently.

Irish Left MEP Lynn Boylan condemned von der Leyen's silence on the The ICC executed arrest warrants and said: "The EU's credibility has been destroyed – not only in Palestine and the South, but even within its own member states. The lack of sanctions is complicity."

Greek MEP Konstantinos Arvanitis joined in, urging the EU to abide by the ICC to be applied in the same way in all cases.

“Please implement the ICC arrest warrants as you have done with previous decisions. Stop applying double standards,” he said.

Slovenian MEP MatjažNemec criticised the “double standards” in the EU's treatment of Israel compared to other countries, including Russia.

“Silence is complicity,” Nemec said, drawing a contrast between the arrest warrants for Russian President Vladimir Putin and Netanyahu.

Not all lawmakers agreed with the call to action.

Far-right MEPs criticised the arrest warrants, arguing that they were politically motivated.

However, they were outnumbered by the voices calling for accountability and compliance with international law.

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Establishment of a special court for Russia's crimes in Ukraine

by AI | 12.May 2025 |

EU High Representative for Foreign Affairs Kaja Kallas said that during their meeting in Lviv, Ukraine and its European partners approved the creation of a special tribunal that will try war crimes committed by Russia in Ukraine.
At the same time, 1 billion euros were approved for Ukraine's defense industry.

ÿ ÿÿÿÿÿ ÿÿÿÿÿ during her visit to Ukraine, during a meeting with European foreign ministers.
Source: European Commission

EU High Representative for Foreign Affairs Kaja Kallas said that Ukraine and its European partners at their meeting in Lviv approved the creation of a special tribunal that will try war crimes committed by Russia in Ukraine. At the same time, 1 billion euros were approved for Ukraine's defense industry.
“No one will go unpunished for the crimes that have been committed,” Kaja Kallas said from Lviv. “The message is important. There are many countries that are already part of the Core Group, but all countries that support the values and principles enshrined in the Charter of the United Nations should also join us and support this special Tribunal,” she added in a video message posted on “X.”

The agreement on the establishment of a special tribunal for the crimes of Russia was signed by the EU High Representative, Kaja Kallas, and the Commissioner for Democracy, Justice and the Rule of Law, Michael McGrath. In attendance were Ukrainian Foreign Minister Andrii Sibihah and the country's Prime Minister Denys Shmyhal, as well as EU foreign ministers who travelled to Lviv after the informal summit they held yesterday, Thursday, in

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Warsaw had. Among them the foreign ministers of France, Poland, Spain, the Netherlands, and their British colleague, David Lammy. Canada also supports the creation of the special tribunal.

The core group that adopted today the Declaration for the Establishment of the Special Court is composed of member states of the Council of Europe. The meeting of the Ministerial Commission of the Council of Europe in Luxembourg on 13-14 May 2025 will be the next step towards the official establishment of the Special Court.

The special tribunal for “crimes of aggression” will cooperate with the International Criminal Court (ICC), which has already issued international arrest warrants for several Russian leaders, including Vladimir Putin.

As for the release of one billion euros for the Ukrainian defence industry, these funds will be financed from interest generated by Russian assets of the Russian Central Bank frozen in the EU.

The West has frozen Russian assets worth around €235billion since the war began in 2022, most of which are in Europe. A few months ago, the EU decided to freeze the interest earned on these assets

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06.05.2025

Joint Statement of the Meeting of Foreign Ministers on the Conclusion of the Work of the core group for the establishment of a special tribunal for the crime of Aggression against Ukraine

(“Lviv Declaration”)

(May 9, 2025, Lviv, Ukraine)

We, the Ministers of Foreign Affairs and other representatives of the States participating in the Core Group for the Establishment of a Special Tribunal for the Crime of Aggression against Ukraine (the Core Group), are today, May 9, 2025, gathered in Lviv, a city that has played an important role in the formation of international legal scholars who laid the foundations for modern international criminal law,

Recalling United Nations General Assembly resolution A/RES/ES-11/1 of 2 March 2022, entitled "Aggression against Ukraine", which in the strongest terms describes the aggression of the Russian Federation against Ukraine is regretted, in violation of Article 2(4) of the Charter of Fundamental Rights of the European Union, United Nations,

Recalling United Nations General Assembly resolution A/RES/ES-11/6 of 23 February 2023, entitled "Principles of the Charter of the United Nations which underlie a comprehensive, just and lasting peace in Ukraine",

Expressing their appreciation for the work done by the legal experts within the core group with regarding the draft legislative instruments necessary for the establishment of a special tribunal for the Crime of aggression against Ukraine since January 2023,

Taking into account the Vienna-Riga Declaration of the Core Group of 22 November 2024,

Guided by the shared objective of ensuring accountability for the crime of aggression committed against Ukraine,

We hereby declare the following:

1. We welcome the completion of the technical work on the draft legal instruments necessary to establish, within the framework of the Council of Europe, a Special Tribunal for the Crime of Aggression against Ukraine.

2. We stress the crucial importance of the Special Tribunal in delivering justice by holding to account those who bear the greatest responsibility for this very serious international crime committed against Ukraine.

3. We emphasise that the Special Tribunal, once established, will, in accordance with its Statute, conduct its proceedings with full respect for international law and human rights, with the aim of ensuring accountability for the crime of aggression and strengthening the international legal order.

4. We express our gratitude to all those who actively contributed to the preparatory work for the draft legislative instruments necessary for the establishment of the Special Court, in particular the legal advisors who participate in the Core Group.

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5. We underline the central role played by the Council of Europe in the establishment of the Special Court and acknowledge the important contribution of the European Commission and the European External Action Service, including their work on the draft Agreement between Ukraine and the Council of Europe on the Establishment of the Special Court, the draft Statute of the Special Court and the draft Extended Partial Agreement setting out the modalities of support for the Special Court, including its financing and other administrative aspects.

6. We reaffirm our continued commitment to the process of establishing the Special Court within the framework of the Council of Europe, to the early commencement of its work and to supporting its effective functioning.

7. To increase international support for the Special Tribunal, we call on other states and international organizations to join our efforts and support the activities of the Special To actively support the tribunal.

8. Those of us representing the member states of the Council of Europe look forward to it the meeting of the Committee of Ministers of the Council of Europe in Luxembourg on 13-May 14, 2025, which will be the next step in formalizing the establishment of the Special Tribunal within the framework of the Council of Europe.

*

This statement was made in the presence of Kaja Kallas, High Representative of the Union for Foreign Affairs and Security Policy and Vice-President of the European Commission, and Michael McGrath, Commissioner for Democracy, Justice, the Rule of Law and Consumer Protection.

Article 19 TEU provides that the Court of Justice of the EU has the task of ensuring that in the interpretation and application of the Treaties the law is observed. Member States must ensure that they have the necessary legal protection in the areas covered by Union law. An important precedent was set in ASJP (C-64/16), where the Court of Justice held that the second subparagraph of Article 19(1) TEU gives concrete legal effects to the principle of the rule of law in Article 2 TEU. This enabled the Court to hold Member States responsible for upholding the independence of the judiciary, arguing that mutual trust between courts is essential for the effective administration of justice.

The protection of the values of Article 2 TEU in the EU

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The European Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities, as enshrined in Article 2 of the Treaty on
European Union (TEU). In order to ensure that these values are respected, Article 7 TEU provides for an EU mechanism to determine the existence of, and potentially sanction, serious and persistent breaches of EU values by a Member State. The EU is also bound by the Charter of Fundamental Rights and has committed to acceding to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

From legal protection of fundamental rights to codification in the Treaties

The European Communities (EC) (now the European Union) were originally established as an international organisation with an essentially economic sphere of action. There was therefore no need for explicit rules concerning respect for fundamental rights, which for a long time were not mentioned in the Treaties and were in any case considered to be guaranteed by the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), to which the Member States had signed.

However, after the Court of Justice of the European Union (CJEU) confirmed the principles of direct effect and primacy of European law, but refused to examine the compatibility of decisions with the national and constitutional law of the Member States (Stork, Case 1/58 ; Ruhrkohlen-Verkaufsgesellschaft, Joined Cases 36, 37, 38-59 and 40-59), certain national courts began to express concerns about the effects that such case law could have on the protection of constitutional values such as fundamental rights. If European law were to prevail even over national constitutional law, it would become possible that it violated fundamental rights.
To address this theoretical risk, the German and Italian constitutional courts each adopted a judgment in 1974 confirming their jurisdiction to interpret European law

to ensure their compatibility with constitutional rights (Solange I; Frontini). This led the CJEU to confirm, through its case-law, the principle of respect for fundamental rights, stating that fundamental rights are enshrined in the general principles of Community law protected by the Court (Stauder, Case 29-69). These are inspired by the constitutional traditions common to the Member States (Internationale Handelsgesellschaft, Case 11-70) and by international treaties for the protection of human rights to which the Member States are parties (Nold, Case 4-73), including the ECHR (Rutili, case 36-75).

With the gradual extension of the EU's powers to policies that have a direct impact on fundamental rights - such as justice and home affairs, which subsequently developed into a fully-fledged area of freedom, security and justice - , the Treaties were amended to firmly anchor the EU in the protection of fundamental rights. The Maastricht Treaty included references to the ECHR and the constitutional traditions common to the Member States as general principles of EU law, while the Treaty of Amsterdam reaffirmed the European 'principles' on which the EU is founded (in the Treaty of Lisbon, 'values' as listed in Article 2 TEU) and established a procedure to suspend the rights provided for in the Treaties in the event of serious and persistent breaches of fundamental rights by a Member State. The drafting of the Charter of Fundamental Rights and its entry into force, together with the Treaty of Lisbon, are the latest developments in this codification process aimed at ensuring the protection of fundamental rights in the EU.

The EU's accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms

Since the ECHR is the main instrument for the protection of fundamental rights in Europe, to which all Member States have acceded, the accession of the EC to the ECHR seemed a logical solution to the need to link the EC to fundamental rights obligations. The Commission repeatedly proposed (in 1979, 1990 and 1993) the accession of the EC to the ECHR. The CJEU, asked for an opinion on this issue, ruled in 1996 in its Opinion 2/94 that the Treaty did not confer on the EC any competence to regulate human rights or to conclude international treaties in this area, making accession legally impossible. The Treaty of Lisbon remedied this situation by introducing Article 6(2), which made EU accession to the ECHR mandatory. This meant that the EU (as was already the case for its Member States) would be subject to supervision of respect for fundamental rights by a judicial body external to itself, namely the European Court of Human Rights (ECtHR). After accession, EU citizens, but also nationals of non-EU countries present on EU territory, would be able to challenge legal acts adopted by the EU directly before the ECtHR on the basis of the provisions of the ECHR, in the same way as they can challenge legal acts adopted by EU Member States.

In 2010, immediately after the entry into force of the Lisbon Treaty, the EU opened negotiations with the Council of Europe on a draft accession agreement, which were finalised in April 2013. In July 2013, the Commission asked the CJEU to rule on the compatibility of this agreement with the Treaties. On 18

In December 2014, the CJEU issued a negative opinion, stating that the draft agreement was liable to undermine the specific characteristics and autonomy of EU law (Opinion 2/13). After a period of reflection and discussions on how to resolve the issues raised by the CJEU, the EU and the Council of Europe resumed negotiations in 2019, which are still ongoing.

The Charter of Fundamental Rights of the EU

In parallel with the 'external' supervisory mechanism that the EC's accession to the ECHR provided for in order to ensure the conformity of legislation and policies with fundamental rights, an 'internal' supervisory mechanism was needed at EC level to
allow for a prior and autonomous judicial review by the CJEU. For this purpose, a specific Bill of Rights for the EU was necessary, and the Cologne European Council of 1999 decided to convene a Convention to draw up a Charter of Fundamental Rights.

The Charter was solemnly proclaimed in Nice in 2000 by Parliament, the Council and the Commission. After being amended, it was proclaimed again in 2007. It was only with the adoption of the Treaty of Lisbon on 1 December
2009 that the Charter acquired direct effect, as provided for in Article 6(1) TEU, and thus became a binding source of primary law.

Although the Charter is based on the ECHR and other European and international instruments, it was innovative in several ways. In particular, it includes disability,
age and sexual orientation as prohibited grounds of discrimination, and includes access to documents, data protection and good governance among the fundamental rights that the Charter affirms.

The scope of the Charter is, on the one hand, potentially very broad, since most of the rights it recognises are granted to ‘everyone’, regardless of nationality or status. On the other hand, Article 51 limits its application to the EU institutions and bodies and, when they are implementing EU law, to the Member States.

Article 7 TEU, the Commission's rule of law framework and mechanism

The Treaty of Amsterdam introduced a new sanctions mechanism to ensure that fundamental rights, as well as other European principles and values such as democracy, the rule of law, equality and the protection of minorities, are respected by Member States outside the legal limits of EU competences.
This meant that the EU was given the power to intervene in areas that would otherwise be left to the Member States, in situations of ‘serious and persistent breach’ of these values. A similar mechanism had first been proposed by Parliament in its 1984 draft text of the EU Treaty. The Treaty of Nice added a preventive phase, in cases of ‘clear risk of a serious breach’ of EU values in a Member State. This procedure was aimed at ensuring that the protection of fundamental rights, as well as of democracy, the rule of law and minority rights, as set out in the Copenhagen criteria for accession of new Member States, would continue to apply after accession, and in the same way for all Member States.

Article 7(1) TEU provides for a 'preventive phase', empowering one third of the Member States, Parliament and the Commission to initiate a procedure whereby the Council, acting by a four-fifths majority, may determine that there is a 'clear risk of a serious breach' in a Member State of the EU values proclaimed in Article 2 TEU, including respect for human rights, human dignity, freedom and equality, and the rights of persons belonging to minorities. Before making such a determination, the Member State concerned must be heard and recommendations may be made, while Parliament must give its consent by a two-thirds majority of the votes cast and an absolute majority of its component Members (Article 354(4) TFEU). This preventive procedure was first activated on 20 December 2017 by the Commission in relation to Poland and on 12 September 2018 by Parliament in relation to Hungary, but remains blocked in the Council, where a number of hearings took place but no recommendations – let alone findings – were adopted. Furthermore, Parliament was denied the right to express its views during the Council hearings, including on Hungary, despite its role as initiator of the procedure. The Commission proposed on 6 May 2024 to close the Article 7(1) procedure against Poland.

Articles 7(2) and 7(3) TEU provide, in the event of the 'existence of a serious and persistent breach' of EU values, for a 'sanctions mechanism' that can be triggered by the Commission or by one third of the Member States (other than Parliament), after inviting the Member State concerned to submit its observations. The European Council determines the existence of the breach by unanimity, after obtaining the consent of Parliament by the same majority as for the preventive mechanism. The Council may decide to suspend certain membership rights of the Member State concerned, including its right to vote in the Council, this time by a qualified majority. The Council may decide to amend or repeal the sanctions, also by a qualified majority. The Member State concerned does not take part in the votes in the Council or the European Council. The adoption and adoption of sanctions remains difficult to achieve due to the unanimity requirement, as demonstrated by the fact that the governments of Hungary and Poland announced that they would veto such decisions in relation to the other Member State.

To bridge the gap between the politically difficult activation of Article 7 TEU procedures (used to address situations outside the scope of EU law) and limited-effect infringement procedures (used in specific situations falling within the scope of EU law), the Commission launched in 2014 an EU Framework for strengthening

~~This framework was intended to seek to ensu~~re effective and

coherent protection of the rule of law as a precondition for ensuring respect for fundamental rights and democracy in situations of systemic threat to them. It is intended to precede and complement Article 7 TEU and

provides for three stages: assessment by the Commission, i.e. a structured dialogue between the Commission and the Member State, followed, if necessary, by an opinion on the rule of law; a Commission recommendation on the rule of law; and follow-up by the Member State of the recommendation. This rule of law framework was applied to Poland in 2016 and, due to lack of success, was followed up with the from the Commission to initiate an Article 7 procedure on 20 December 2017.

In July 2019, the Commission took a further step in its Communication entitled ' the rule of law within the Union: A blueprint for action ' and launched a

rule of law mechanism, consisting of an annual evaluation cycle based on a rule of law report monitoring the situation in the Member States, which forms the basis for the interinstitutional dialogue. The first report was published in September 2020, accompanied by 27 country chapters, covering the justice system (and in particular its independence, quality and efficiency), the anti-corruption framework (legal and institutional set-up, prevention, repressive measures), media pluralism (regulatory bodies, transparency of ownership and government intervention, protection of journalists) and other institutional issues related to checks and balances (legislative process, independent authorities, accessibility, judicial review, civil society). The report significantly strengthens EU oversight by covering not only civil but also criminal and administrative justice, compared to the EU Justice Scoreboard and other monitoring and reporting instruments, paying attention to judicial independence, corruption, media pluralism, separation of powers and civil society space. A network of national contact points was set up to collect information and ensure dialogue with Member States, and dialogue was promoted with stakeholders, including bodies of the Council of Europe, the Organisation for Security and Co-operation in Europe, the Organisation for Economic Co-operation and Development, judicial networks and non-governmental organisations. The Third Annual Report , published in July 2022, also included a set of recommendations to each Member State, the follow-up of which is to be examined in subsequent annual rule of law reports.

The fourth annual report , published in July 2023, evaluated the implementation of the previous year's recommendations and made further recommendations.

Other instruments for the protection of EU values

The EU has other instruments to protect EU values.

When the Commission proposes a new legislative initiative, it assesses its compatibility with fundamental rights by means of an impact assessment. This aspect is then also assessed by the Council and Parliament.

The Commission also publishes an annual report on the application of the Charter of Fundamental Rights , which is examined and discussed by the Council, which adopts conclusions on it, and by Parliament, in the context of its annual report on the situation of fundamental rights in the EU. In December 2020, the Commission launched a new strategy to strengthen the implementation of the Charter in the EU also with regard to EU funds through the Charter-specific 'enabling condition' introduced in the 2021 Common ,Provisions Regulation . Initially, cohesion funds for Poland and Hungary were not disbursed on this basis. On 13 December 2023, the Commission found that Hungary had fulfilled the horizontal enabling condition, allowing it to claim up to EUR 10.2 billion in funds previously blocked. In February 2024, the Commission also found that Poland had fulfilled its obligations, allowing it to request the release of up to EUR 76.5 billion in cohesion funds for 2021-2027.

Since 2014, the Council has also organised an annual dialogue between all Member States to promote and protect the rule of law, focusing on a different topic each year

As of the second semester of 2020, the Council has decided to focus each semester on examining the situation of the rule of law in five Member States, on the basis of the Commission's Rule of Law Report.

In addition, issues related to EU values are monitored under the European Semester and may be the subject of country-specific recommendations. The areas concerned include justice systems (based on the Justice Scoreboard), as well as disability, social rights and citizens' rights (regarding protection against organised crime and corruption).

Bulgaria and Romania were also covered by the Cooperation and Verification Mechanism, which closed on 15 September 2023 and was replaced by the Rule of Law Mechanism.

Infringement proceedings are an important tool to sanction breaches of EU values in the Union, and the CJEU is developing its case law on this subject. Infringement proceedings can be initiated in the event of non-compliance of a national law with EU law and values in individual and specific cases (while Article 7 also applies to situations outside the scope of EU law where breaches of fundamental rights are systematic and persistent) and the CJEU can impose financial sanctions for non-compliance with orders or judgments.

The European Union Agency for Fundamental Rights (FRA) , established in 2007 in Vienna, plays an important role in monitoring the situation of fundamental rights in the EU. The FRA is responsible for collecting, analysing, disseminating and evaluating information and data on fundamental rights. It also conducts research and scientific surveys and publishes annual and thematic reports on fundamental rights.

The Commission is also strengthening equality and the protection of minorities – two of the pillars of Article 2 TEU – through specific strategies, proposals and measures to promote gender equality and combat violence against women and domestic violence, racism, hate speech, hate crime and anti-Semitism, and to protect the rights of LGBTIQ people, Roma, persons with disabilities and children, under the overarching concept of 'A Union of Equality'. The Commission, supported by the Parliament and 15 Member States, referred Hungary to the CJEU over its anti-LGBTIQ law for violation of, among other things, Article 2 TEU. She also proposed guidelines for equality bodies to be strengthened by means of common standards, which have recently been adopted.

After a blockade caused by the vetoes of the governments of Hungary and Poland, the European Council of 10-11 December 2020 finally reached an agreement on a regulation on a general regime of conditionality for the protection of the Union budget . The regulation allows for the protection of the EU budget where breaches of the rule of law in a Member State are found to affect, or seriously risk affecting, the sound financial management of the EU budget or the protection of the EU's financial interests in a sufficiently direct manner. An action brought by the Hungarian and Polish governments against the regulation was dismissed by the CJEU , clearing the way for the Commission and the Council to trigger the mechanism against Hungary , leading to the suspension of €6.3billion of cohesion policy programmes.

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The Commission is currently discussing the implementation of the Recovery and Resilience Facility national plans with a number of Member States and monitoring whether they meet the agreed milestones and targets, which are a condition for the disbursement of the funds. These aim to address the challenges identified in the European Semester country-specific recommendations adopted by the Council, and in the Commission's rule of law reports and related recommendations, as well as in the Article 7 procedures against Poland and Hungary. On 13 December 2023, the Commission found that Hungary had failed to address the breaches it had committed with regard to the principles of the rule of law, by not fully implementing the related 27 super milestones, in particular the one on the independence of the judiciary, while €21billion in funds for Hungary remained blocked . On 6 May 2024, she also proposed closing the procedure under Article 7(1) TEU against Poland

Role of the European Parliament

Parliament has always been committed to strengthening respect for and protection of fundamental rights in the EU. As early as 1977, it adopted, together with the Council and the Commission, a Joint Declaration on Fundamental Rights in which the three institutions undertook to ensure respect for fun, damental rights in the exercise of their powers. In 1979, Parliament adopted a resolution calling for the European Community to accede to the ECHR.

The draft Treaty establishing the European Union of 1984 Parliament, provided that the ; that by the Union must protect the dignity of the individual and recognise for all persons within its jurisdiction the fundamental rights and freedoms resulting from the principles common to national constitutions and the ECHR. It also provided for the Union's accession to the ECHR. In its resolution of 12 April 1989 Parliament announced its adoption of the Declaration of Fundamental Rights and Freedoms.

Since 1993, Parliament has held an annual debate and adopted a resolution on the situation of fundamental rights in the EU, based on a report by the Committee on Civil Liberties, Justice and Home Affairs. In addition, it has adopted a growing number of resolutions on specific issues relating to the protection of the values of Article 2 TEU in the Member States.

Parliament has always supported the EU in drawing up its own Bill of Rights and has advocated that the Charter of Fundamental Rights should be binding. This was finally achieved in 2009 with the Treaty of Lisbon.

More recently, Parliament has repeatedly expressed its serious concerns about the gradual erosion of the standards of Article 2 TEU in some Member States. To address this problem, Parliament has made a number of suggestions to strengthen the protection in the EU not only of fundamental rights, but also of democracy and the rule of law, and more generally of all EU values covered by Article 2 TEU, by proposing new mechanisms and procedures to fill the existing gaps. In several resolutions since 2012, Parliament has called for the establishment of a ‘Copenhagen Commission’, a European policy cycle for fundamental rights, a mechanism

for early warning, a freezing procedure and the strengthening of the Fundamental Rights Agency (FRA).

In a groundbreaking 2016 resolution on this topic, Parliament consolidated its previous proposals and called on the Commission to submit an interinstitutional agreement establishing an EU mechanism on democracy, the rule of law and fundamental rights , which would be based on a Union Pact with the Commission and the Council. This would include an annual policy cycle, based on a report on compliance with EU values within the Union, drawn up by the Commission and a panel of experts, followed by a parliamentary debate and accompanied by arrangements to address risks or breaches.

The Commission took on board many of Parliament's suggestions in its 2019 Communication (establishing an interinstitutional cycle, with an annual report, monitoring Member States' compliance with the rule of law and related issues), making specific recommendations to Member States, but not those covering the entirety of Article 2 TEU (not only the rule of law, but also democracy, fundamental rights, equality and minorities), setting up a committee of independent experts and an interinstitutional agreement on the cycle, and resuming the publication of anti-corruption reports. Parliament also called for a new draft agreement for the EU's accession to the ECHR and for Treaty changes such as deleting Article 51 of the Charter of Fundamental Rights, transforming it into a Bill of Rights of the Union and removing the unanimity requirement for equality and non-discrimination. In a 2020 resolution , Parliament proposed the text of an interinstitutional agreement on strengthening EU values, elaborating on previous proposals and adding the possibility for urgent reports and the creation of an interinstitutional working group. In a 2021 resolution, Parliament also called on the Commission to expand its annual rule of law report to cover all the values of Article 2 TEU and to issue country-specific recommendations

to take.

In 2018, Parliament adopted a resolution welcoming the Commission's decision to activate Article 7(1) TEU with regard to Poland resolution on the initiation of the Article 7(1) TEU procedure with regard to Hungary ,, as well as a by submitting a reasoned proposal to the Council requesting it to determine whether there is a clear risk of a serious breach of the values referred to in Article 2 TEU and to address appropriate recommendations to Hungary in this regard [1] .

In 2020 and 2022, Parliament also adopted resolutions on Poland respectively and Hungary , which extended the scope of concerns to be examined in Article 7(1) TEU procedures. It called the Commission also calls on the Commission to use all available instruments, including the Rule of Law Conditionality Regulation, to address breaches of the values of Article 2 TEU by Hungary and Poland. On 29 February 2024, the Commission instructed Poland access to up to €137billion in EU funding, following the launch of an action plan to restore the rule of law with reforms to strengthen the independence of the judiciary. On 14 March 2024, Parliament decided to take legal action against the Commission over its decision to release €10.2billion in frozen assets to Hungary in exchange for lifting its veto on Ukraine. It adopted a resolution on Hungary's hearings in the Council under Article 7(1) TEU to strengthen the rule of law and their budgetary implications .

Following the murder of journalists Daphne Caruana Galizia in Malta and Ján Kuciak and his fiancée in Slovakia, and in order to strengthen Parliament's oversight and action on the values

group is tasked with addressing threats to EU values that occur across the Union and submitting proposals for action to the Committee on Civil Liberties, Justice and Home Affairs.

For more information on Parliament's activities in the field of fundamental rights during the previous term, see ' the EU: achievements of the European Parliament during the 2014-2019 term and challenges for the future '.

Ottavio Marzocchi

European Parliament

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OPINION OF THE ADVOCATE GENERAL

H. SAUGMANDSGAARD ØE

from May 18, 2017 (1)

NLCase C-64/16

Associação Sindical dos Juízes Portugueses

in return for

Tribunal de Contas

[request for a preliminary ruling from the Supremo Tribunal Administrativo (Supreme Administrative Court, Portugal)]

“Reference for a preliminary ruling – Second subparagraph of Article 19(1) TEU – Effective judicial protection – Charter of Fundamental Rights of the European Union – Article 47 – Independence of the judiciary – National scheme providing for reduction of salaries in the public sector – “Austerity measures”

I. Introduction

1. The request for a preliminary ruling from the Supremo Tribunal Administrativo (Supreme Administrative Court, Portugal) has been made in proceedings between the Associação Sindical dos Juízes Portugueses (Trade Union of Portuguese Judges; ‘ASJP’) and the Tribunal de Contas (Court of Auditors, Portugal) concerning the reduction in the salaries of the members of that court, which was the result of a law temporarily reducing salaries in the public sector in order to mitigate the effects of the economic crisis in Portugal.

2. The referring court asks whether such a national provision is compatible with the principle of judicial independence, as it follows, in its view, from both the second subparagraph of Article 19(1) TEU(2) as Article 47 of the Charter of Fundamental Rights of the European Union (hereinafter: ‘the Charter’)(3), and from the case-law of the Court of Justice.

3. Before setting out the substantive reasons why I consider that the preliminary question
If the answer to the question is in the negative, I will examine the complaints raised in this case concerning the inadmissibility of the reference for a preliminary ruling and the manifest lack of jurisdiction of this Court.

II. Applicable provisions

A. Union law

4. The main acts of EU law referred to in this case which aimed to reduce the excessive deficit of the Portuguese Republic and to grant it financial assistance are the following:

- Council Decision 2010/288/EU of 2 December 2009 concerning the existence of a excessive deficit in Portugal(4);
- Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism(5);
- Agreement on an economic and financial adjustment programme, better known as the "Memorandum of Understanding", signed on 17 May 2011 by the the Portuguese Government, the European Commission, the International Monetary Fund (hereinafter: 'IMF') and the European Central Bank (hereinafter: 'ECB')(6);
- Council Implementing Decision 2011/344/EU of 30 May 2011 on granting Union financial assistance to Portugal(7), as amended – in particular – by Council Implementing Decision 2012/409/EU of 10 July 2012(8), and by Council Implementing Decision 2014/234/EU of 23 April 2014(9); and
- the Council Recommendation of 18 June 2013 aimed at ending excessive government deficit in Portugal(10).

B. Portuguese law

1. Law No. 75/2014

5. Law No 75/2014, establishing the temporary salary reduction mechanism and the conditions for its reversal (Law No 75/2014 establishing the temporary salary reduction scheme and the conditions for its repeal) of 12 September 2014(11) (hereinafter 'Law No 75/2014') aims, according to Article 1(1) thereof, to determine the temporary application of the salary reduction mechanism in the public sector and to establish the principles to be observed in the event of its repeal.

6. Article 2 of that Act, entitled "Salary reduction", reads as follows:

"1 – The total gross monthly salary of the persons referred to in paragraph 9, if it exceeds EUR 1 500, regardless of whether such persons are performing their duties on that date or, for whatever reason, take up their duties after that date, reduced by:

a) 3.5% of the total amount of salaries exceeding EUR 1,500 and less than EUR 2,000 amounts;

(b) 3.5 % of the amount of EUR 2 000, increased by 16 % of the value of the total salary above EUR 2 000, so that the overall reduction is between 3.5 % and 10 % for salaries equal to or above EUR 2 000 and equal to or below EUR 4 165;

c) 10 % of the total value for salaries exceeding EUR 4 165.

[...]

9 – This Act applies to the officials and persons listed below:

a) the President of the Republic;

(b) the President of the Assembleia da República [Parliament of the Republic];

c) the Prime Minister;

d) the members of the Assembleia da República;

e) the members of the government;

f) the judges of the Tribunal Constitucional [Constitutional Court], the Tribunal de Contas [Court of Auditors] and the Attorney General of the Republic, sitting and standing magistrates of courts, judges and magistrates of administrative courts, tax courts and cantonal courts;

(g) the representatives of the Republic to the autonomous regions;

(h) the members of the assembleias legislativas das regiões autónomas [parliaments of the autonomous regions];

(i) the members of the regional governments;

j) the local elected representatives;

(k) members of other constitutional bodies not mentioned in the preceding paragraphs and members of governing bodies of autonomous administrative authorities, in particular those exercising their functions in conjunction with the Assembleia da República;

l) the members and employees of cabinets, administrative bodies and support services of the officials and bodies referred to in the preceding paragraphs, of the President and Vice-President of the Superior Council of the Judiciary, of the President and Vice-President of the Superior Council of the Administrative and Fiscal Courts, of the President of the Supremo
Tribunal de Justiça [Supreme Court], of the President and the Magistrates of the Tribunal Constitucional [Constitutional Court], of the President of the Supremo Tribunal Administrativo, of the President of the Tribunal de Contas [Court of Auditors], of the Provedor de Justiça [Ombudsman] and of the Attorney General of the Republic;

(m) the military personnel of the Forças Armadas e da Guarda Nacional Republicana (GNR) [Armed Forces and National Republican Guard], including military judges and advisers to the Public Prosecutor's Office, as well as other military forces;

n) the management staff of the departments of the staff of the President and of the Assembleia da República, of other support services of constitutional bodies, of other departments and bodies of the central, regional or local public administration, and staff performing similar functions for remuneration;

(o) managers in public service or persons treated as such, members of executive, deliberative, advisory or supervisory bodies or other statutory bodies of public institutions subject to general or special regulations, of public law legal persons whose independence derives from the fact that they are active in the field of regulation, supervision or control, of public undertakings whose share capital is wholly or mainly owned by the public authorities, of public undertakings whose operation has been awarded to a third party, of

institutions from the regional and municipal business sector, from public foundations and from other public institutions;

(p) employees holding public office in the staff of the President and of the Assembleia da República or in other constitutional bodies, as well as those holding public office in any public law employment relationship, including employees whose legal status is being reclassified or who are on extraordinary leave;

q) employees of public institutions subject to special arrangements and of public law legal persons whose independence derives from their activities in the field of regulation, supervision or control, including [the employees] of independent regulatory authorities;

(r) employees of public undertakings whose share capital is wholly or mainly owned by the government, of public undertakings and institutions of the regional and local business sector;

s) employees and managers of public and private law public foundations and of public institutions not covered by the preceding paragraphs;

t) reserve personnel, early-retirement personnel or personnel at the disposal of the Member States who are not on active duty and who are eligible for financial benefits linked to the salary of personnel on active duty.

[...]

15 – The provisions of this Article shall be binding and shall prevail over any provisions to the contrary, even if they are special or exceptional provisions, and over instruments of collective labour regulations and employment contracts, which may not override or amend these provisions.

[...]."

2. Act No. 159-A/ 2015

7. Lei n° 159-A/2015, Extinção da redução remuneratória na Administração Pública (Law No. 159-A/2015 repealing the salary reduction in the public sector) of 30 December 2015(12) (hereinafter: 'Law No 159-A/2015') has gradually repealed the discount measures of Law No 75/2014 with effect from 1 January 2016.

8. Article 2 of that law provides that "[t]he salary reduction of Law No. 75[/2014] [...] shall be withdrawn in phases in three-monthly steps during 2016 as follows:

a) withdrawal of 40% for salaries paid from 1 January 2016;

b) withdrawal of 60% for salaries paid from 1 April 2016;

c) withdrawal of 80% for salaries paid from 1 July 2016;

d) complete withdrawal of the reduction in salaries paid from 1 October 2016."

III. Main proceedings, preliminary question and procedure before the Court

9. The ASJP, on behalf of some of its members, judges of the Tribunal de Contas (Court of Auditors), a special administrative appeal is lodged seeking annulment of the

administrative decisions taken on the basis of Article 2 of Law No 75/2014, which introduced a temporary reduction in salary for the persons listed in that article who work in the Portuguese public sector, including magistrates(13). The judges represented by that association also request reimbursement of the amounts deducted from their salaries with effect from October 2014, plus statutory default interest, and a declaration that they are entitled to payment of their salaries without that reduction.

10. In support of this action, the ASJP submits that the contested salary reduction measures infringe the 'principle of judicial independence', which is laid down in Article 203 of the Portuguese Constitution(14) and enshrined in both Article 19(1) TEU and Article 47 of the Charter.

11. The Supremo Tribunal Administrativo states in its order for reference that, since the expenditure control measures, embodied in the salary reduction at issue in the main proceedings, were taken in the context of reducing the excessive deficit in Portugal –
regulated and supervised by the institutions of the European Union – followed by financial assistance – granted and governed by legal acts of the Union, there can be little doubt that such measures were taken within the framework of Union law or are at least of European origin.

12. He goes on to point out that the discretionary power which the Portuguese State enjoys, in consultation with the institutions of the Union, in giving concrete form to its budgetary policy intentions does not, however, exempt it from the obligation imposed on it under Article 51(1) of the Charter to comply with the general principles of EU law, including that of judicial independence.

13. In this regard, he notes that the effective protection of the Union's legal order
the rights arising under the second subparagraph of Article 19(1) TEU are guaranteed in the first instance by the national courts and that citizens of the Union have the right, under Article 47 of the Charter, to the independence and impartiality of those courts. According to the referring court, everything indicates that the independence of the courts and tribunals is also guaranteed by guarantees as to the legal status of their members, in particular as regards working conditions, which is why the unilateral and continuous reduction in the salaries of the clients of the applicant in the main proceedings is contested.

14. Consequently, by decision of 7 January 2016, received at the Court on 5 February 2016, the Supremo Tribunal Administrativo decided to stay the proceedings and to refer the following question for a preliminary ruling:

> 'In view of the imperative requirement to eliminate the excessive budget deficit and the financial assistance provided for in provisions [of EU law], must the principle of judicial independence – as it follows from the second subparagraph of Article 19(1) TEU, Article 47 of the [Charter] and the case-law of the Court of Justice – be interpreted as precluding the salary reduction measures to which magistrates in Portugal are subject, on the ground that they have been imposed unilaterally and continuously by other public authorities/bodies, as is apparent from Article 2 of Law No 75[/2014]?'

15. Written observations were submitted by the ASJP, the Portuguese Government and the European Commission. Representatives of the Portuguese Government and the European Commission were present at the hearing on 13 February 2017.

IV. Analysis

16. Before examining the merits of the reference for a preliminary ruling, I would like to draw attention to the fact that two objections have been raised in this case: one objection that the reference is inadmissible and one objection that the Court lacks jurisdiction. As regards the order in which the two objections should be dealt with,

I note that the jurisdiction of the Court should, in principle, be examined first. Nevertheless, it seems to me appropriate in this Opinion to deal first with the admissibility of the reference for a preliminary ruling, since in the present case it raises less complex questions than the examination of the jurisdiction of the Court, and since that examination is more closely linked to the provisions whose interpretation is sought, that is to say to the substantive analysis, which follows immediately thereafter.

A. Admissibility of the request for a preliminary ruling

17. The Portuguese Government and the Commission have raised two types of complaint which are capable of affecting the admissibility of this reference for a preliminary ruling. The first concerns the imprecise reasoning of the order for reference, the second the fact that the national measures contested in the main proceedings had already been withdrawn at the time the case was brought before the Court.

1. Gaps in the referral decision

18. In its written and oral observations, the Commission first argues that the order for reference is defective, in particular since it neither clearly indicates which case-law of the Court is relevant for the interpretation of the provisions of EU law referred to in the question referred for a preliminary ruling nor the reasons why it selected those provisions(15), and that it follows that the Court must declare that it has no jurisdiction to answer that question.

19. However, I am of the opinion that the complaints thus raised against the content of the The order for reference may affect the admissibility of the reference for a preliminary ruling rather than the jurisdiction of the Court.(16)

20. It is indeed essential, as the Commission points out, that the referring court formulates its request clearly and precisely, since that document constitutes the sole basis for the proceedings before the Court, both for the Court itself and for the participants in the proceedings.(17) The substantive requirements which the request for a preliminary ruling must satisfy are explicitly set out in Article 94 of the Rules of Procedure of the Court of Justice, of which the referring court is expected, in the context of the cooperation established by Article 267 TFEU, to be aware and which it must scrupulously observe. It is particularly necessary for the national courts to set out, in the order for reference itself, the legal context of the main proceedings and to make clear not only the reasons for choosing the provisions of EU law whose interpretation is sought but also the relationship between those provisions and the national legislation applicable to the dispute.(18)

21. In the present case, the reasoning of the decision to refer is particularly short, particularly from two important perspectives, so that one may wonder whether the request for a preliminary ruling it contains is admissible.

22. First, as regards the relationship between the contested national measures and the provisions whose interpretation is sought in the question referred for a preliminary ruling – namely the second subparagraph of Article 19(1) TEU and Article 47 of the Charter – the referring court is not very clear, since it merely indicates that, in its view, those provisions give rise to a general principle of judicial independence which the measures in question may have infringed,(19) without providing further details.

23. Secondly, the question referred for a preliminary ruling refers to the ‘case-law of the Court of Justice’ from which this principle of judicial independence is also said to derive, but the grounds for the order for reference do not cite any decision of that Court to that effect. The referring court merely relies on the existence of ‘numerous [...] judgments’ of the Court concerning the concept of ‘court or tribunal’ within the meaning of Article 267 TFEU in which the independence of the body which had requested a preliminary ruling was taken into account, without however also

but to mention one of those – according to him relevant – judgments. In the absence of adequate information, I do not think it is necessary to rule on this aspect of the question submitted to the Court.

24. Notwithstanding the gaps in the order for reference noted above, it seems to me, in the light of all the information obtained in that order and during the exchange of views, that the Court is nevertheless sufficiently informed to be able to rule on the possible interpretation of Article 19 TEU and Article 47 of the Charter and, therefore, to be able to give a useful answer to the question referred.(20)

2. Withdrawal of the contested measure before the Court

25. In its written observations, the Portuguese Government argued that the request for a preliminary ruling was inadmissible because, at the time it was brought before the Court, it had become devoid of purpose owing to changes in Portuguese national legislation which, in the course of 2016, led in stages to the full restoration of the salary rights at issue in the main proceedings. That Government concluded from this that the Court no longer needed to answer the question referred to it, since it had become hypothetical.(21)

26. At the hearing, the Government confirmed that the salary reduction in the public sector resulting from Law No 75/2014 was phased in by Law No 159-A/2015 between 1 January and 1 October 2016(22) in its entirety – but without retroactive effect. It follows that the loss which the persons represented by the applicant in the main proceedings claim to have suffered as a result of the salary reduction with effect from October 2014 continued into the past and until 1 October 2016, on which date the salaries of all persons employed in the public sector to whom that reduction had applied were restored to their previous level.

27. The Portuguese Government, however, argued that the question referred for a preliminary ruling concerned the alleged infringement of judicial independence caused by Law No 75/2014, a potential problem that had already been resolved at the time of the referral to the Court on 5 February 2016 by the repeal of the effects of that law by Law No 159-A/2015, adopted on 30 December 2015 and entering into force on 1 January 2016. It added that the effects of Law No 75/2014 prior to its repeal, as relied on by the ASJP, were exclusively of a property-law nature and that, in its view, that problem did not form part of the subject-matter of the request for a preliminary ruling.

28. In this regard, I would like to point out that there is a presumption of relevance to the questions concerning the interpretation of EU law given by the national court within the factual and legal context which it is its own responsibility to establish, the correctness of which is not for the Court to verify. The Court may reject a request from a national court only where it is clear that the interpretation of EU law sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical and where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it. (23)

29. According to settled case-law, it is clear from both the wording and the scheme of Article 267 TFEU that the preliminary ruling procedure presupposes that a dispute is actually pending before the national court, in the context of which it must give a ruling taking into account the preliminary ruling. (24) Consequently, where the main proceedings had already ceased to have a purpose at the time when the referring court referred the case to the Court, the Court declared the request for a preliminary ruling inadmissible, (25) whereas a declaration that there is no need to adjudicate is in principle reserved for cases in which the relevant incident or event occurred in the course of the proceedings before the Court. (26)

30. In particular, the Court shall not rule on a request for a preliminary ruling if the national provisions initially applicable to the main proceedings have been repealed or not

longer apply because of their unconstitutionality.(27) However, the Court has held that the fact that an amendment to the national legislation concerned was imminent does not affect the admissibility of the request for a preliminary ruling if it is apparent from the information contained in the request that an answer from the Court to the questions referred will determine the outcome of the main proceedings.(28)

31. In the present case, I consider that it is not clear from the information submitted to the Court that the interpretation of EU law sought is unrelated to the subject matter of the main proceedings or that the issue raised is hypothetical in nature.

32. Contrary to what the Portuguese Government argues, the dispute before the referring court does not concern judicial independence as such, since the principle of judicial independence was invoked solely as a plea in support of the application for annulment of the allegedly unlawful administrative decisions reducing the salaries of the persons represented by ASJP and for reimbursement of the amounts wrongly withheld from their salaries under Law No 75/2014.

33. Furthermore, since Law No 159-A/2015, which amended Law No 75/2014, had not, at the date on which the request for a preliminary ruling was lodged, (29) reversed the contested salary reductions either in the past or immediately, in their entirety, it appears that, as at that date, there was still an obligation on the referring court – which considered it possible that the national legislation at issue infringed EU law – to rule on the subject-matter of the action and, consequently, a need for the Court to answer the question referred for a preliminary ruling.

34. In view of the foregoing, I consider that this request for a preliminary ruling is admissible.

B. Jurisdiction of the Court

35. In support of its action in the main proceedings, the applicant in the main proceedings alleges that the contested administrative decisions are unlawful, on the ground that the national legislation implementing them, namely Law No 75/2014, is not consistent with EU law, since it infringes the 'principle of judicial independence' as it follows, according to that party, from both the second subparagraph of Article 19(1) TEU and Article 47 of the Charter. The referring court adopts this common approach to both provisions not only in the wording of the question referred for a preliminary ruling but also in the grounds for that question.

36. In order to rule on the objections of lack of jurisdiction raised by the Portuguese Government and the Commission, I consider that an independent analysis of the second subparagraph of Article 19(1) TEU is necessary, separate from that of Article 47 of the Charter, since the criteria for the applicability of those provisions and, therefore, for the question whether the Court has jurisdiction to interpret them, are, in my view, different.

1. Article 19, paragraph 1, second subparagraph, TEU

37. In their written and oral observations, the Portuguese Government and the Commission have not explicitly stated the reasons why, in their view, the Court would not have jurisdiction to rule on the separate interpretation of Article 19 TEU. In fact, they argued at length that the national legislation at issue in the main proceedings does not constitute a measure implementing Union law within the meaning of Article 51 of the Charter, from which, in their view, it follows that there is no need to interpret Article 47 of the Charter, and it seems to me that they have proposed similar reasoning in relation to Article 19 TEU.(30)

38. However, I consider that an extensive interpretation – or even an interpretation by analogy – is not possible in this regard, given the specific wording of Article 19 TEU, which differs from that of Article 51(1) of the Charter, to which provision I shall return later(31), but which I have already referred to

point out that it limits the scope of the Charter to measures of the Member States implementing provisions of Union law.

39. Without prejudging the substantive analysis, which will examine the content and scope of Article 19 TEU(32) will be determined in more detail, it must now be determined whether the Court has jurisdiction in the present case to interpret that article by reason of the possible applicability – in a context such as that in the main proceedings – of its provisions and, in particular, of the second subparagraph of paragraph 1 thereof, to which the question referred for a preliminary ruling refers.

40. Under that second paragraph, 'Member States shall provide remedies sufficient *to ensure effective legal protection in the fields covered by Union law'.(33)* That last phrase, which is characteristic of that provision, is, in my view, decisive for assessing whether the Court has jurisdiction to interpret it in the present case.

41. In my view, the effective judicial protection with access to adequate remedies to which individuals must be able to rely under this paragraph is required of the Member States when national courts exercise their judicial activity in areas covered by EU law,
that is to say, as European courts. I consider that this may be the case for courts dealing with the system at issue in the main proceedings, since they may be required to decide disputes to which EU law applies and for which the possibility of having recourse to such
remedies must be guaranteed.

42. That finding is, in my view, sufficient to hold that the Court has jurisdiction in the present case to interpret the second subparagraph of Article 19(1) TEU. That jurisdiction must now be demonstrated for the interpretation of Article 47 of the Charter, as requested, since the criteria for the application of that plea are not formulated in the same way as those for the application of Article 19 TEU, even if those different criteria may lead to the same result.

2. Article 47 of the Charter

43. According to settled case-law, the fundamental rights guaranteed within the EU legal order, including the 'right to an effective remedy and to a fair trial', enshrined in Article 47 of the Charter, are applicable in all situations governed by EU law, but not outside them. (34) Thus, Article 51(1) of the Charter provides that the provisions of the Charter are addressed to the Member States only 'when they are implementing Union law', in accordance with the Court's case-law on that concept. (35) Article 6(1) TEU, which confers binding force on the Charter, provides, like Article 51(2) of the Charter, that the provisions of the Charter shall in no way extend the competences of the Union as defined in the Treaties. Consequently, where a legal situation does not fall within the scope of EU law, the Court has
no jurisdiction to hear it and any provisions of the Charter which may be relied upon cannot in themselves constitute a basis for such jurisdiction.(36)

44. In the present case, both the Portuguese Government and the Commission argue that the requirements are not met the conditions under which it could be concluded that the adoption and implementation by the Portuguese Republic of the measures pursuant to Article 2 of Law No 75/2014 implements EU law within the meaning of Article 51 of the Charter and that, therefore, the Court manifestly lacks jurisdiction to interpret Article 47 of the Charter.

45. I recall that the Court apparently declared itself incompetent to answer the substantive question to previous requests for a preliminary ruling, also submitted by Portuguese courts, on the ground that the order for reference did not contain any specific information allowing it to be assumed that the national measures at issue in those cases, which are comparable to those at issue in the main proceedings(37), were intended to implement EU law within the meaning of the aforementioned Article 51(38).

Unlike in those cases, however, in this case there does not appear to be any *obvious* lack of jurisdiction, since

the referring court has provided more explicit indications, albeit brief ones, which suggest that the present case involves the implementation of EU law.

46. The referring court explains that the salary reduction measures referred to in Article 2 of Law No 75/2014 are justified by compelling reasons of budgetary consolidation; it then lists a series of measures of EU law concerning the excessive public deficit of the Portuguese State and the financial assistance granted to that Member State. (39) Nevertheless, it is not easy to identify the reasons why that court considers that there is a direct link between the measures at issue in the main proceedings and one or other provision of EU law, since it does not elaborate on this point . (40)

47. Thus, the referring court does not specify the legal framework – as regards the provisions of EU law applicable at the time – within which the contested national measures were adopted. In particular, it does not draw a clear distinction, as the Portuguese Government emphasised at the hearing, between, on the one hand, the stage at which the Portuguese State was bound by EU law rules relating to the reduction of an excessive deficit and, on the other hand, the stage at which the scheme containing the obligations arising from the granting of financial assistance by the Union became applicable.
was.

48. As Advocate General Bot pointed out in another case concerning austerity measures taken by a Member State in the context of obligations entered into with the European Community, in order to determine whether the provisions of the Charter are applicable from the perspective of Article 51 thereof(41) – not only the wording of the national provisions in question but also the content of the EU law instruments in which those obligations are laid down. In that regard, he has also rightly pointed out that it is of little relevance that those instruments give the Member State concerned scope for manoeuvre as regards the measures best suited to ensuring compliance with those obligations, since the relevant provisions concern objectives which – unlike mere recommendations addressed by the Council on the basis of Article 126 TFEU to Member States whose government deficit is deemed to be excessive – are sufficiently detailed and precise to constitute specific EU law provisions in that regard.(42)

49. In the present case, the referring court does not rely on the wording of Law No 75/2014 to characterise the relationship between that law and EU law. Indeed, that law does not refer anywhere to an act of EU law, unlike the explanatory memorandum to the draft law which led to its adoption, which demonstrates the relationship with budgetary obligations arising from EU law.(43)

50. By contrast, the referring court, like the ASJP, relies in particular on the agreement on an economic and financial adjustment programme concluded by the Portuguese State in May 2011(44) and, lastly, on Council Implementing Decision 2012/409 of 10 July 2012 granting Union financial assistance to Portugal, as well as on the Council Recommendation of 18 June 2013 with a view to putting an end to the excessive government deficit in Portugal.

51. In that regard, I would point out that, by their very nature, recommendations of the EU institutions – unlike decisions – are not binding acts. (45) Furthermore, I agree with the Portuguese Government (46) and the Commission that the abovementioned recommendation, which is based in particular on Article 126(7) TFEU, does not contain sufficiently specific and precise objectives to allow the Portuguese State to be considered to have implemented requirements of EU law within the meaning of Article 51 of the Charter by virtue of that recommendation.

52. As regards Implementing Decision 2012/409, mentioned by the referring court, I would point out that it was replaced by Council Implementing Decision 2014/234 of 23 April 2014, which was therefore applicable ratione temporis at the time when the contested measures were adopted pursuant to Law No 75/2014, adopted on 12 September 2014. Article 1 of the latter decision amended Implementing Decision 2011/344, which initially laid down the conditions for the grant of financial assistance

assistance to the Portuguese Republic by the Union in line with Regulation No 407/2010. (47) It is apparent from paragraph 2 of that article that the Portuguese State was required to take specific measures in the course of 2014, 'in line with the provisions of the Memorandum of Understanding', and not merely general ones, (48) which, in the context of 'the 2015 consolidation strategy', included in particular 'the Government developing in 2014 a single salary scale, to be introduced in 2015, aimed at rationalising and ensuring consistency in remuneration policies for all careers in the public sector'. (49) The discretion which that Member State certainly enjoyed in the exercise of its budgetary powers to determine which precise economic corrective measures it considered most appropriate for achieving the objectives thus prescribed does not affect that analysis. (50)

53. Although serious doubts may arise from the fact that the order for reference is not very clear on this issue, I am nevertheless inclined to take the view that the adoption of measures to reduce salaries in the public sector under Article 2 of Law No 75/2014, which is at issue in the main proceedings, implements provisions of EU law within the meaning of Article 51 of the Charter and that, consequently, the Court has jurisdiction to answer the request for a preliminary ruling also in so far as it concerns Article 47 of the Charter.

C. On the merits

1. Subject of the preliminary question

54. In support of its claims, the ASJP argues that the legal position of sitting magistrates should not be confused with the legal position of government officials in general, who find themselves in a more uncertain situation. Relying on, inter alia,
(51) the European Charter on the Statute for Judges(52) adopted under the auspices of the Council of Europe, it states that the stability of the remuneration of serving judges and its setting at a level which is resistant to attempts from outside to influence their decisions makes it possible to comply, in particular, with the principles of independence and impartiality, which are safeguards for judicial activity. It argues that the principle of judicial independence, in particular in financial terms, which derives from Article 19 TEU and Article 47 of the Charter, precludes decisions to reduce salaries, such as those at issue in the main proceedings, which are taken unilaterally by the executive and legislative authorities of a Member State.

55. In the same vein, the Court is essentially asked in the order for reference to determine whether There is a general principle of EU law requiring the authorities of the Member States to respect the independence of national courts and, as regards the circumstances of the main proceedings, more specifically to leave their salaries intact at a level sufficient to enable them to perform their duties freely.

56. The referring court considers that such a principle and such consequences flow from both the second subparagraph of Article 19(1) TEU and Article 47 of the Charter, (53) which provisions the Court will, in my view, have to interpret separately (54) if it considers that it has jurisdiction to interpret them. (55) Like the Portuguese Government and the Commission, I do not share the referring court's substantive position for the reasons set out below.

2. Interpretation of the second subparagraph of Article 19(1) TEU

57. In support of their argument that the second subparagraph of Article 19(1) TEU expresses a general principle of EU law which affirms judicial independence and which precludes the national measures at issue in the main proceedings, the referring court and the ASJP argue that, from a functional point of view, the courts sitting in the Member States are also European courts, since, in particular by virtue of that provision, they primarily ensure the effective protection of the rights arising from the EU legal order.

58. Although the second subparagraph of Article 19(1) TEU provides that 'Member States shall provide remedies sufficient to ensure *effective judicial protection* in the fields covered by Union law', (56) and the magistrates of the national courts responsible for that purpose contribute to such judicial protection, the fact remains that the interpretation of the wording of that provision requires that it be examined in its context.

59. In that context, I would point out that Article 19 TEU is included in Title III of that Treaty, entitled 'Provisions governing the institutions', which lays down a number of general rules concerning the framework conditions within which the various institutions of the European Union –
and in particular the Court of Justice of the European Union referred to in the aforementioned Article 19 – exercise the powers conferred on them.

60. Furthermore, in the light of the provisions of paragraphs 1 to 3 of Article 19 TEU, it seems to me that the aforementioned concept of 'effective judicial protection' was developed in close connection with the exercise of the functions of the Court of Justice of the European Union:
the first three paragraphs are devoted to its composition and powers. In particular, the first subparagraph of paragraph 1 confers on that institution, which consists of both the Court of Justice and the General Court, the task of ensuring that in the interpretation and application of the Treaties the law is observed, (57) it being noted that there are exceptions to the 'rule of general jurisdiction' laid down in that paragraph. (58)

61. It follows from case law that the second paragraph of the aforementioned paragraph 1 once again sets out the obligation of the Member States confirm that they must 'provide a system of remedies and procedures capable of ensuring respect for the fundamental right to effective judicial protection'.(59) This second paragraph is therefore not directly aimed at national courts, but is intended to ensure that remedies exist in the Member States so that every individual can enjoy such protection in all areas where EU law applies. This requirement is linked to the fact that judicial review of compliance with the legal order of the European Union is ensured not only by its own courts but also, by virtue of the two subparagraphs of the aforementioned paragraph, in cooperation with national courts.(60)

62. The Court has emphasised that that obligation also follows from Article 47 of the Charter with regard to measures taken by the Member States for the implementation of EU law within the meaning of Article 51(1) of the Charter. (61) The first paragraph of Article 47 expressly grants everyone whose rights and freedoms guaranteed by EU law are violated the right to an effective remedy before a tribunal, in compliance with the conditions laid down in that article.

Without prejudging the interpretation of that article and its possible consequences with regard to the facts of the main proceedings,(62) I would point out at this stage that the purpose and content of Article 47 are different from those of Article 19 TEU.

63. As regards Article 19 TEU, the Court has held that it is a matter for the domestic law of each Member State to designate, in compliance with the requirements laid down in particular in the second subparagraph of paragraph 1 thereof, the courts or tribunals having jurisdiction and to lay down the detailed rules of procedure for actions for the protection of the rights which individuals derive from EU law. (63) It seems to me that the purpose of that subparagraph, which requires Member States to provide the remedies necessary to protect those rights effectively, is primarily procedural.

64. In the light of the foregoing, I agree with the Portuguese Government(64) that the concept of 'effective judicial protection' within the meaning of the second subparagraph of Article 19(1) TEU should not be confused with the 'principle of judicial independence' referred to in the question referred and which is said to flow from that provision.(65)

65. Furthermore, it seems to me that the difference between, on the one hand, the right to effective judicial protection, which must be guaranteed to the individuals of the Member States by means of adequate legal remedies, and, on the other hand, the right to a trial by judges who exercise justice in a completely independent manner, which is also recognised in the interests of those individuals, is clear, having regard to both the title and the wording of Article 47 of the Charter, which distinguishes between the two rights.(66) The distinction is made

This is also made clear in the European Convention on Human Rights and Fundamental Freedoms(67), since the 'right to an effective remedy' before a national authority is provided for in Article 13 thereof, while the '[r]ight to a fair trial', including in particular the right of everyone 'to have his case heard by an independent tribunal', is set out in Article 6 thereof(68), even though the two articles are clearly materially linked(69). I will return to this when interpreting Article 47 of the Charter.(70)

66. In my view, the obligation imposed on Member States by the second subparagraph of Article 19(1) TEU to provide for a system of 'remedies' is linked only to the right to 'effective judicial protection', as is clear from the wording of that provision, and not to the right to a fair trial before an independent tribunal, which has a substantially different content.

67. Consequently, I consider that the second paragraph must be interpreted as not establishing a general principle of EU law requiring the independence of the judges of all courts of the Member States to be guaranteed.

68. If the Court were to hold that the principle of judicial independence flows directly from the requirement of effective judicial protection laid down in the second subparagraph of Article 19(1) TEU, as the referring court considers, I would consider, in the alternative, in any event that neither that provision nor that principle(71) can be understood as precluding national measures reducing salaries such as those contested by the applicant in the main proceedings, since they are in no way specifically aimed at judges but, on the contrary, are of general application(72) since they apply to a large group of persons employed within the public sector.(73)

3. Interpretation of Article 47 of the Charter

69. Like the ASJP, the referring court submits that, under Article 47 of the Charter, the courts of the Member States must provide effective judicial protection of the rights conferred on citizens by the EU legal order in an independent and impartial manner and that the unilateral salary reduction at issue in the main proceedings may have undermined the independence of the judges concerned.

70. In this regard, I would recall – as Advocate General Wathelet recently explained(74) – that the Charter, as is apparent from its title(75) and the wording of Article 47 thereof, recognises, on the one hand, the right to an effective remedy, which is also enshrined in Article 13 of the ECHR, and, on the other hand, the right to a fair trial, including the right of access to an independent and impartial tribunal, which is enshrined in Article 6(1) of the ECHR.

71. Since the content of the aforementioned Article 47 is directly inspired by those provisions of the ECHR,(76) Article 52(3) of the Charter requires it to be interpreted not only in the light of the explanations to the Charter but also in the light of the case-law of the European Court of Human Rights ('the ECtHR')(77), so that the rights guaranteed by Article 47 have in principle the same meaning and scope as those granted by the ECHR, although that rule does not prevent EU law from providing more extensive protection. It has been pointed out from the outset(78) that the protection afforded by Article 47 of the Charter provides protection whose substantive scope is broader than that of the corresponding articles of the ECHR.(79)

72. In the light of the case-law relating to the ECHR and the Protocols annexed thereto,(80) it seems to me that the 'principle of judicial independence' referred to in this request for a preliminary ruling falls within the right of '[e]very person to have his case heard by an independent and impartial tribunal' under the second paragraph of Article 47 of the Charter,(81) rather than within the 'right to an effective remedy' provided for in the first paragraph of that article.(82)

73. Both the referring court and the ASJP submit that the principle of judicial independence 'may preclude the salary reduction measures to which magistrates in Portugal are subject, on the grounds that they have been imposed unilaterally and continuously by other public authorities/bodies'.(83)

74. The ECtHR has repeatedly held that the guarantee of an "independent tribunal" within the meaning of Article 6(1) of the ECHR(84) not only requires that judges be independent in their legal position(85) but also in the exercise of their functions. The latter has an internal dimension within the judiciary (86), which is not at issue in this case, as well as an external dimension beyond it, which implies that judges must be able to do their work without being influenced by the parties to the proceedings(87) or by the other powers within the State,(88) which, in my view, is the only approach advanced by the ASJP. I would stress that the Court has adopted a similar approach when establishing the criteria for assessing whether a national court is independent.(89)

75. As regards, more specifically, the independence of members of a judicial body from the point of view of their remuneration, the ECtHR has accepted the interdependence between the two by holding that 'the failure to pay judges their remuneration in a timely manner is incompatible with the need to ensure that they are able to exercise their judicial functions independently and impartially, resistant to external pressures aimed at influencing their decisions and conduct', emphasising in this regard that 'judicial independence is a sensitive issue'.(90)

76. This analysis is based on several Council of Europe legal instruments which mention such concerns. Article 6 of the European Charter on the Statute for Judges, which has no binding effect, states that the remuneration of judges must be set at a level which ensures that they are not exposed to any pressure which could undermine their independence, even though the level of such remuneration may vary from one judge to another on the basis of objective criteria, such as the importance of the duties assigned to them.(91) Furthermore, recommendations of the Committee of Ministers(92) have urged that '[t]he remuneration of judges should be proportionate to their role and responsibilities and at a level which enables them to withstand any external pressure which may influence their decisions' and that '[s]pecific legal provisions should be adopted to make it impossible to make reductions in the salary of judges specifically targeted'.(93)

77. In the light of the foregoing, I consider that the right of everyone to have his case heard by an independent tribunal, within the meaning of Article 47 of the Charter, requires that the independence of the members of that tribunal be guaranteed by providing them, having regard to the responsibilities they bear, with a remuneration that is sufficiently high and stable to protect them from any risk of external interference or pressure prejudicial to the neutrality of the judicial decisions which they are called upon to take.

78. While the level of remuneration of judges must be consistent with the importance of the public function which they perform, that amount must not be disproportionate to economic and social reality and, in particular, to the average standard of living in the State in which the persons concerned perform their duties.(94) Furthermore, reasonable stability of their income means, in my view, that it must not vary over time to such an extent as to jeopardise the independence of their judgment, but not that any change is ruled out.

79. More specifically, in a period of serious economic crisis such as that which prevailed in the period preceding the adoption of the measures at issue in the main proceedings, (95) the principle of judicial independence cannot be understood as precluding a reduction in the remuneration of judges, even though such a reduction must of course remain within reasonable proportions in order to avoid making them susceptible to any pressure that may be brought to bear on them. A fair balance must be struck, as the Portuguese Government submits, between the general interest of the Community and the particular interest of the judges, who are responsible for ensuring that the rights conferred on individuals are respected.

80. Moreover, the contested discount measures – as I(96) as the Portuguese Government(97) and the Commission have already emphasised – does not concern only sitting magistrates but a large number of people working in the public sector. Since the measures were by no means aimed exclusively or even specifically at judges, it cannot be assumed that the 'other public authorities/bodies' mentioned in the question referred would have attempted to unbalance members of the judiciary, especially since members of both the legislature and the executive were affected by exactly the same austerity measures under Article 2 of Law No 75/2014.

81. Consequently, I consider that Article 47 of the Charter should be interpreted as meaning that does not oppose the adoption of national measures such as those contested in the main proceedings, since they do not infringe the principle of judicial independence laid down in that article.

82. A contrary interpretation would in practice have the consequence, in my view regrettable, that in the event of a serious economic crisis the Member States would be deprived of the possibility of a necessary – not exclusively concerning judges and not disproportionate – intervention in the salaries of persons who are part of the public sector in the broad sense.

V. Conclusion

83. In the light of the foregoing, I propose that the Court answer the question referred for a preliminary ruling by the Supremo Tribunal Administrativo as follows:

> "The second subparagraph of Article 19(1) TEU and Article 47 of the Charter of Fundamental Rights of the European Union must be interpreted as not precluding general measures to reduce salaries in the public sector to which judges are subject under national legislation such as that at issue in the main proceedings."

Original language: French.

Article 19 TEU reads as follows: '1.

The Court of Justice of the European Union shall comprise the Court of Justice, the General Court and specialised courts. It shall ensure that in the interpretation and application of the Treaties the law is observed.

Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law.

The Court of Justice shall consist of one judge from each Member State. It shall be assisted by Advocates-General. [...]

The Court of Justice of the European Union shall give judgment in accordance with the Treaties [...]."

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3 Article 47 of the Charter, entitled 'Right to an effective remedy and to a fair trial', provides in its first and second paragraphs: 'Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone has the right to a fair and public hearing within a reasonable time,

by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented."

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4 OJ 2010, L 125, p. 44 and corrigendum OJ 2014, L 106, p. 46.

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5 OJ 2010, L 118, p. 1.

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6 The original English document can be found at the following web address: https://www.imf.org/external/np/loi/2011/prt/051711.pdf.

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7 OJ 2011, L 159, p. 88.

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8 OJ 2012, L 192, p. 12.

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9 OJ 2014, L 125, p. 75.

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10 Original English document: Council recommendation with a view to bringing an end to the situation of an excessive government deficit in Portugal, June 18, 2013, 10562/13.

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11 *Diário da República,* 1st series, No. 176 of 12 September 2014, p. 4896. Draft Law No. 239/XII, approved by the Council of Ministers on 3 July 2014 and which led to Law No. 75/2014, can be consulted at the following address: https://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheDiplomaAprovado.aspx?BID=18267.

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12 *Diário da República,* 1st series, no. 254 of December 30, 2015, p. 10006-(4). The text of Law No. 159-A/2015 can also be consulted at the following web address: http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheDiplomaAprovado.aspx?BID=19068.

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13 As regards that category, see the list in the aforementioned Article 2, paragraph 9, point (f).

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14 According to Article 203, “the courts shall be independent and subject only to the law”.

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15 The Commission also argues that the referring court does not explain the reasons why the magistrates were affected in particular by a national measure which concerns a large number of office-holders. Since, in my view, this argument concerns substantive EU law rather than procedural rules, I prefer to deal with it in that context (see points 54 et seq. of this Opinion).

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16 Where the order for reference does not contain sufficient information on the legal and factual context of the main proceedings or on the reasons justifying the need for an answer to the questions referred for a preliminary ruling in order to resolve the dispute, the Court will generally declare the request for a preliminary ruling inadmissible, in whole or in part (see, in particular, judgments of 18 July 2013, ÖFAB, C-147/12, EU:C:2013:490, paragraphs 44 to 46, and of 4 May 2016, Philip Morris Brands and Others, C-547/14, EU:C:2016:325, paragraphs 47 to 53, and order of 8 September 2016, Google Ireland and Google Italy, C-322/15, EU:C:2016:672, paragraph 15 et seq.).

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17 The order for reference must provide sufficient information, firstly to the Court, to enable it to give a useful answer to the question referred for a preliminary ruling and, secondly, to all the interested parties designated in Article 23 of the Statute of the Court of Justice of the European Union – and in particular the 28 Member States – to whom the order for reference is served after translation, so that they can submit any observations.

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18 The Court has repeatedly recalled these rules in its case-law (see, in particular, the passages in the judgments referred to in footnote 16 of this Opinion and the case-law cited therein) and in its ‘Recommendations to national courts and tribunals on the initiation of preliminary ruling proceedings’, updated in 2016 (OJ 2016 C 439, pp. 1 to 8, and in particular paragraphs 14 to 18 and the summary annex ‘Essential elements of a request for a preliminary ruling’). See also Gaudissart, MA, ‘Les recommandations de la Cour de justice aux juridictions nationales, relatives à l'introduction de procédures préjudicielles’, *Journal de droit européen,* 2017 No 2, p. 42 et seq.

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19 With regard to the reasoning of the referral decision, see points 11 et seq. of this Opinion.

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20 See, by analogy, judgments of 12 February 2015, Surgicare (C-662/13, EU:C:2015:89, paragraphs 16 to 23), and of 11 June 2015, Lisboagás GDL (C-256/14, EU:C:2015:387, paragraphs 24 to 27).

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21 The Portuguese Government has put forward these arguments in the alternative, in the event that the Court were to declare itself competent to rule on the request for a preliminary ruling.

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22 See points 7 and 8 of this Opinion.

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23 See, in particular, judgments of 8 December 2016, Eurosaneamientos and Others (C-532/15 and C-538/15, EU:C:2016:932, paragraph 28), and of 21 December 2016, Associazione Italia Nostra Onlus (C-444/15, EU:C:2016:978, paragraph 36).

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24 See, in particular, judgment of 26 February 2015, Matei (C-143/13, EU:C:2015:127, paragraph 38), and order of 3 March 2016, Euro Bank (C-537/15, not published, EU:C:2016:143, paragraph 32).

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25 See, in particular, order of the Court of 10 February 2015, Liivimaa Lihaveis (C-175/13, not published, EU:C:2015:80, paragraphs 17 to 21).

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26 See, in particular, judgments of 24 October 2013, Stoilov i Ko (C-180/12, EU:C:2013:693, paragraphs 44 to 48), and of 3 July 2014, Da Silva (C-189/13, not published, EU:C:2014:2043, paragraphs 34 to 37).

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27 See, in particular, judgments of 9 December 2010, Fluxys (C-241/09, EU:C:2010:753, paragraphs 32 to 34), of 27 June 2013, Di Donna (C-492/11, EU:C:2013:428, paragraphs 27 to 32), and order of 3 March 2016, Euro Bank (C-537/15, not published, EU:C:2016:143, paragraphs 34 to 36).

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28 See judgment of 12 January 2010, Petersen (C-341/08, EU:C:2010:4, paragraphs 28 and 29).

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29 I would point out once again that the request for a preliminary ruling was registered on 5 February 2016 and that, although Law No 159-A/2015 entered into force on 1 January 2016, it did not have retroactive effect and was initially only partially implemented (the reduction was 40% for salaries from 1 January 2016, 60% for salaries from 1 April 2016 and 80% for salaries from 1 July 2016), and was only fully implemented with effect from 1 October 2016 (see points 7 and 8 and 26 and 27 of this Opinion). The loss of income claimed by the persons represented by the applicant in the main proceedings had therefore not been fully compensated at the date of the referral to the Court.

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30 The Portuguese Government has inferred from the case-law on Article 51 of the Charter that the Court clearly lacks jurisdiction to rule on the interpretation of both Article 19 TEU and Article 47 of the Charter. The Commission, for its part, has based the Court's lack of jurisdiction to answer the question referred for a preliminary ruling from the perspective of Article 19 TEU in particular on the fact that the referring court had failed to provide sufficient reasons in its order for reference as to the relationship between EU law and the national legislation applicable to the main proceedings (in my view, this complaint concerns rather the admissibility of the request for a preliminary ruling, which was examined in points 18 et seq. of this Opinion).

31 See points 44 et seq. of this Opinion.

32 Let me first point out that I will be arguing for a different interpretation of Article 19 TEU than that of the ASJP (see points 58 et seq. of this Opinion).

33 My italics.

34 In its judgment of 26 February 2013, Åkerberg Fransson (C-617/10, EU:C:2013:105, paragraphs 17 to 23), the Court held, in particular, that since '[t]he fundamental rights guaranteed by the Charter must be respected where national legislation falls within the scope of EU law, ... there cannot be cases in which EU law applies without those fundamental rights being applied. The applicability of EU law implies that the fundamental rights guaranteed by the Charter are applicable.' (paragraph 21). See also judgment of 16 May 2017, Berlioz Investment Fund (C-682/15, EU:C:2017:373, paragraph 49).

35 The Court has emphasised that the concept of 'implementing EU law' within the meaning of Article 51 of the Charter requires that there be some connection between the EU law act and the national measure concerned, which goes beyond the proximity of the matters concerned or the indirect influence of one matter on the other. In that regard, it must be determined, inter alia, whether it is intended to implement a provision of EU law, what the nature of that provision is and whether it does not pursue objectives other than those covered by EU law, even if that provision could indirectly affect that law, and whether there is a provision of EU law specific to that area or capable of affecting it (see, in particular, judgments of 10 July 2014, Julián Hernández and Others, C-198/13, EU:C:2014:2055, paragraph 34 et seq., and of 6 October 2016, Paoletti and Others, C-218/15, EU:C:2016:748, paragraph 14 et seq.).

36 See, in particular, judgment of 8 November 2016, Lesoochranárske zoskupenie VLK (C-243/15, EU:C:2016:838, paragraph 51 et seq.), as well as orders of 14 April 2016, Târÿia (C-328/15, not published, EU:C:2016:273, paragraphs 23 and 24), and of 13 December 2016, Semeraro (C-484/16, not published, EU:C:2016:952, paragraph 43).

37 Namely, legal provisions that implemented a salary cut in the public sector in order to limit government spending in Portugal.

38 See orders of 7 March 2013, Sindicato dos Bancários do Norte and Others (C-128/12, not published, EU:C:2013:149, paragraph 12), of 26 June 2014, Sindicato Nacional dos Profissionais de Seguros e Afins (C-264/12, EU:C:2014:2036, paragraphs 19 et seq.), and 21 October 2014, Sindicato Nacional dos Profissionais de Seguros e Afins (C-665/13, EU:C:2014:2327, paragraph 14).

39 That list includes most of the actions mentioned in point 4 of this Opinion.

40 The referring court refers to an ‘Explanatory Memorandum to the 2011 State Budget’ by the Minister for Finance and Public Administration, which refers to Decision 2010/288 of the Council of the European Union, without specifying whether that decision was taken into account in the legislative history of Law No 75/2014, which is at issue in the main proceedings.

41 See the Opinion of Advocate General Bot in Florescu and Others (C-258/14, EU:C:2016:995, points 61 et seq.).

42 That case concerned, in particular, the Memorandum of Understanding concluded on 23 June 2009 between Romania and the European Community, as well as Council Decision 2009/459/EC of 6 May 2009 providing Community medium-term financial assistance to Romania (OJ 2009 L 150, p. 8).

43 The explanatory memorandum to Bill No 239/XII emphasises that the Portuguese Republic’s membership of the European Union and its accession to the euro area oblige it to comply with strict budgetary conditions, which are set out in the TFEU, in the Protocol to that Treaty and in the regulations implementing the Stability and Growth Pact, as well as in the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union. That memorandum also mentions the possibility of imposing financial sanctions on Member States that exceed the budget deficit reference value. It also refers to the economic adjustment programme agreed with the Commission, the ECB and the IMF. It is added that, since the budgetary discipline imposed by the permanent and unchangeable obligations to which the Portuguese Republic is bound, now that it is part of the European Union and the Eurozone, requires that the total wage bill in the public sector – as an essential part of State expenditure – be kept under control, the bill aims to establish the percentages and limits of the reduction in current salaries from 2011 onwards, while also determining its complete, gradual withdrawal in accordance with the available budgetary margin (see pp. 1-4).

44 I would like to emphasise that this first memorandum of understanding, which has subsequently been amended several times – as the Commission indicates in its observations – provided for a three-year programme for the period ‘until mid-2014’ (see recital 2 of Council Implementing Decision 2011/344).

45 Under the fourth and fifth paragraphs of Article 288 TFEU.

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46 The Government refers in particular to judgment No 574 of 14 August 2014 of the Tribunal Constitucional (Constitutional Court, Portugal), delivered to that effect. That court nevertheless points out that certain specific measures may result from the implementing decisions of the Council in the context of the Union's programme of economic and financial assistance to the Portuguese State.

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47 According to paragraph 1 of that Article 1, the financial assistance is to be made available to the Portuguese State for a period of three years and six weeks, starting from the first day after the entry into force of Implementing Decision 2011/344. Since the end of the economic reform programme, that State has been subject to a post-programme surveillance, as the Commission referred to it at the hearing (see on this subject: https://ec.europa.eu/info/businesseconomyeuro/economicandfiscalpolicycoordination/eufinancialassistance/whicheucountrieshavereceivedassistance/financialassistanceportugal_en).

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48 A clear distinction must be made between those measures, which are specifically imposed on a Member State, and the budgetary obligations generally imposed on Member States, and in particular on those belonging to the euro area, in particular under the regulations on the Stability and Growth Pact [see, inter alia, recitals 1 to 5 and Article 1 of Council Regulation (EU) No 1177/2011 of 8 November 2011 amending Regulation (EC) No 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure (OJ 2011 L 306, p. 33)].

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49 See Article 3(8)(h)(i) and (ii) of Implementing Decision 2011/344 as amended by Article 1 of Implementing Decision 2014/234, as well as the fourth indent of recital 11 thereof, which states that '[t]he Public Expenditure Review and the 2014 consolidation strategy are underpinned by a number of key reforms in the public administration', including 'a revision of the salary scale and the development of a single salary supplement scale'.

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50 I consider that the adoption by the Portuguese State of Law No 75/2014 was not an 'autonomous initiative going beyond the discretion conferred and limited by EU law', as the Commission argues, but an act aimed at complying with the specific economic obligations it had assumed in order to receive the financial assistance granted to it.

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51 The ASJP also mentions two evaluation reports on the European judicial systems by the Commission européenne pour l'efficacité de la justice (CEPEJ) (European Commission for the Efficiency of Justice) of the Council of Europe, which can be consulted at the following web address: http://www.coe.int/t/dghl/cooperation/cepej/series/default_fr.asp.

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52 The European Charter on the Statute for Judges, adopted at a meeting on 8-10 July 1998, provides in Article 6, entitled 'Remuneration and social security': '6.1. Judges exercising judicial functions on a professional basis shall be entitled to remuneration sufficient to enable them to withstand pressures designed to influence their decisions and, more generally, their judicial action by undermining their independence and impartiality.

to touch.

6.2. The remuneration may vary according to seniority, the nature of the position to which he or she is professionally appointed or the importance of the tasks assigned, which shall be assessed on the basis of transparent criteria. [...]"

The article-by-article commentary to this Charter provides useful information on its content (available at the following web address: https://wcd.coe.int/ViewDoc.jsp?p=&id=1766477&Site=COE&direct=true#).

I recall that the question referred for a preliminary ruling refers not only to those articles but also to 'the case-law of the Court of Justice', from which the principle of judicial independence also flows, but that the order for reference does not cite any decision of the Court to that effect.

Although it cannot be ruled out that some considerations relating to Article 47 of the Charter may also provide clarification for the interpretation of Article 19 TEU, and vice versa (see, in particular, Opinion of Advocate General Wathelet in Berlioz Investment Fund, C-682/15, EU:C:2017:2, points 38 and 67).

And of course, provided that the request for a preliminary ruling is declared admissible.

My italics.

Article 19, paragraph 2, TEU describes the composition of the Court and the status of its members, while paragraph 3 defines its areas of jurisdiction in terms of the various remedies available to it.

See, in particular, judgment of 19 July 2016, H v Council and Commission (C-455/14 P, EU:C:2016:569, paragraphs 39 and 40) concerning derogations in the field of the common foreign and security policy.

See, in particular, judgments of 3 October 2013, Inuit Tapiriit Kanatami and Others v Parliament and Council (C-583/11 P, EU:C:2013:625, paragraphs 100 and 101), and of 28 April 2015, T & L Sugars and Sidul Açúcares v Commission (C-456/13 P, EU:C:2015:284, paragraphs 49 and 50).

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60 See, in particular, the Opinion of Advocate General Kokott in Inuit Tapiriit Kanatami and Others v Parliament and Council (C-583/11 P, EU:C:2013:21, points 34, 116 and 121); judgments of 3 October 2013, Inuit Tapiriit Kanatami and Others v Parliament and Council (C-583/11 P, EU:C:2013:625, paragraphs 90 and 99), and of 28 April 2015, T & L Sugars and Sidul Açúcares v Commission (C-456/13 P, EU:C:2015:284, paragraph 45), and order of 24 January 2017, Beul v Parliament and Council (C-53/16 P, not published, EU:C:2017:66, paragraphs 18 and 19).

61 See judgment of 28 April 2015, T & L Sugars and Sidul Açúcares v Commission (C-456/13 P, EU:C:2015:284, paragraph 50). See also judgment of 16 May 2017, Berlioz Investment Fund (C-682/15, EU:C:2017:373, paragraph 44).

62 See points 69 et seq. of this Opinion.

63 See in particular judgment of 3 October 2013, Inuit Tapiriit Kanatami and Others v Parliament and Council (C-583/11 P, EU:C:2013:625, paragraph 102 et seq.).

64 The Commission has not, either in its written or in its oral observations – or in the alternative – taken a clear position on the interpretation of the second subparagraph of Article 19(1) TEU.

65 The Portuguese Government rightly emphasises that the principle of effective judicial protection, which aims to guarantee the existence of an appropriate procedure for any individual right or interest protected by law to enforce it in court, must be seen in a completely different perspective than the principle of judicial independence, which guarantees the impartiality of the judicial authority in the face of extrajudicial and unlawful interference in the judicial process

procedure.

66 The title of Article 47 of the Charter distinguishes between the '[r]ight to an effective remedy', to which the first paragraph of that article is devoted, and the '[r]ight to a impartial trial', which implies the right to an 'independent tribunal', as stated in the second paragraph. See also, to that effect, judgment of 8 November 2016, Lesoochranárske zoskupenie VLK (C-243/15, EU:C:2016:838, paragraph 54 et seq.).

67 Convention signed in Rome on 4 November 1950 (hereinafter: 'ECHR').

68 The same distinction is made, moreover, in the Constitution of the Portuguese Republic: 'Access to justice and effective judicial protection' is provided for in Article 20 thereof, while the independence of the judiciary is provided for in Article 203 thereof (cited in footnote 14 of this Opinion).

69 See in particular the judgment of the ECtHR of 26 October 2000 (Kudŷa v. Poland, CE:ECHR:2000:1026JUD003021096, paragraphs 150-156).

70 See points 69 et seq. of this Opinion.

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71 For the specific consequences of the principle of judicial independence in the main proceedings, see also points 77 et seq. of this Opinion.

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72 However, the fact that those measures were only temporary in nature (Law No 75/2014 entered into force as from October 2014, whereas the salary reduction was repealed in its entirety by Law No 159-A/2015 as of 1 October 2016), as the Portuguese Government argues, does not seem to me to be decisive, since any infringement of a general principle of EU law, even if temporary, would be inherently contrary to EU law, although the seriousness of the infringement would clearly be less than in the case of a permanent infringement.

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73 See the long list of persons, including in particular both sitting and standing magistrates, in Article 2, paragraph 9, points (a) ('President of the Republic') to (t) ('reserve staff, staff on early retirement or staff at the disposal of the Court […]') of Law No 75/2014, cited in point 6 of this Opinion.

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74 See Opinion of Advocate General Wathelet in Berlioz Investment Fund (C-682/15, EU:C:2017:2, points 34 et seq.). See also judgment of 16 May 2017, Berlioz Investment Fund (C-682/15, EU:C:2017:373, point 54).

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75 Namely "Right to an effective remedy and to a fair trial".

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76 According to the Explanations relating to the Charter of Fundamental Rights (OJ 2007 C 303, p. 17 et seq.), 'the first paragraph [of Article 47 of the Charter] is based on Article 13 of the ECHR' and 'the second paragraph [corresponds] to Article 6(1) of the ECHR' (see 'Explanation on Article 47', first and third paragraphs).

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77 The fact that reference must be made to Article 47 of the Charter only if the situation at issue is subject to EU law (see judgment of 16 May 2017, Berlioz Investment Fund (C-682/15, EU:C:2017:373, paragraph 54 and the case-law cited) does not preclude the possibility of interpreting that article in the light of the case-law of the ECtHR. See, in particular, judgment of 15 February 2016, N. (C-601/15 PPU, EU:C:2016:84, paragraph 45 et seq.), as well as the examples from the case-law cited by Lebrun, G., 'De l'utilité de l'article 47 de la Charte des droits fondamentaux de l'Union européenne', *Revue trimestrielle des droits de l'homme,* 2016, No. 106, especially pp. 439-445.

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78 See Explanations to the Charter "Explanation on Article 47", second and fourth paragraphs, as well as "Explanation on Article 52", where "Article 47, [second and third paragraphs]" is cited as one of the

“[a]rticles the content of which is the same as that of the corresponding articles of the ECHR, but the scope of which is wider”.

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79 In his Opinion in Berlioz Investment Fund (C-682/15, EU:C:2017:2, point 37), Advocate General Wathelet emphasises that ‘Article 47 of the Charter has a broader material scope.
First of all, this provision applies where “the rights and freedoms guaranteed by Union law have been violated” (whether or not they are included in the Charter), whereas the application of Article 13 ECHR requires a violation of the “rights and freedoms set out in [the ECHR]”. On the other hand, Article 6(1) ECHR limits the right to a fair trial to situations involving the determination of civil rights and
obligations or the determination of the merits of a criminal charge. No such limitation is found in the second paragraph of Article 47 of the Charter” (see also points 61 et seq. of that Opinion).

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80 In the Explanations to the Charter, the ‘Explanation on Article 52’ clarifies that in paragraph 3 of Article 52 ‘[t]he reference to the ECHR applies both to the Convention and to the Protocols annexed to it. The content and scope of the rights guaranteed are determined not only by the text of those instruments but also by the case-law of the [ECtHR] and of the Court of Justice of the European Union. The last sentence of [paragraph 3] is intended to enable the Union to ensure more extensive protection. In any event, the level of protection guaranteed
by the Charter may never be lower than that guaranteed by the ECHR.’

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81 For the sake of clarity, I would point out that the right of access to an independent tribunal within the meaning of Article 47 of the Charter also applies to administrative proceedings, such as those in the main proceedings (see, in particular, Dutheil de la Rochère, J., ‘Charte des droits fondamentaux de l'Union européenne’, *Jurisclasseur Europe,* issue 160, 2010, paragraph 87). As regards proceedings concerning magistrates from the perspective of Article 6(1) ECHR, see ECtHR judgment of 23 June 2016, Baka v. Hungary (CE:ECHR:2016:0623JUD002026112, paragraphs 102 et seq.).

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82 On the ‘right to an effective remedy’ referred to in Article 13 ECHR, see in particular the judgment of the ECtHR of 26 October 2000 (Kudÿa v. Poland, CE:ECHR:2000:1026JUD003021096, paragraph 157).

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83 See the wording of the question referred for a preliminary ruling and the observations of the ASJP, which states that the decisions on the contested reductions were taken and imposed by the executive and legislative authorities without taking into account the fact that the remuneration of judges contributes to their functional independence. On the other hand, it does not dispute that the clients of the applicant in the main proceedings were actually able to make use of the remedies available to them in Portugal: the referring court is the Supremo Tribunal Administrativo.

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84 The conditions of independence and impartiality imposed on national courts are certainly interrelated and are sometimes examined together (see, in particular, the judgment
ECHR of 21 June 2016, Ramos Nunes de Carvalho e Sá v Portugal, CE:ECHR:2016:0621JUD005539113,

point 74). Nevertheless, they remain different concepts, so I will limit my explanation – taking into account the circumstances of the main proceedings – to the first.

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85 The manner in which the members of the court are appointed, the duration of their term of office or their irremovability are taken into account, inter alia (see, in particular, ECtHR judgment of 18 July 2013, Maktouf and Damjanoviÿ v. Bosnia and Herzegovina, CE:ECHR:2013:0718JUD000231208, paragraph 49).

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86 This first aspect requires that every judge must be free from directives or pressure from within the judiciary itself, in particular from colleagues to whom he is administratively or hierarchically subordinate (see, in particular, ECtHR judgment of 6 October 2011, Agrokompleks v. Ukraine, CE:ECHR:2011:1006JUD002346503, paragraph 137).

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87 See, in particular, ECtHR judgment of 18 July 2013, Maktouf and Damjanoviÿ v. Bosnia and Herzegovina (CE:ECHR:2013:0718JUD000231208, paragraph 49).

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88 See, in particular, as regards the legislative branch, ECtHR judgment of 3 September 2013, MC and Others v. Italy (CE:ECHR:2013:0903JUD000537611, paragraph 59), and as regards the executive branch, ECtHR judgment of 21 June 2016, Ramos Nunes de Carvalho e Sá v. Portugal (CE:ECHR:2016:0621JUD005539113, paragraphs 70 and 75).

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89 See, in particular, judgment of 16 February 2017, Margarit Panicello (C-503/15, EU:C:2017:126, paragraph 37 et seq. and the case-law cited).

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90 Judgment of the ECtHR of 26 April 2016, Zoubko and Others v. Ukraine (CE:ECHR:2006:0426JUD000395504, paragraphs 67 and 68), concerning the alleged infringement of Article 1 of the Additional Protocol to the ECHR, which states: ‘Every natural or legal person is entitled to the peaceful enjoyment of his possessions.’

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91 These provisions are cited in footnote 52 of this Opinion.

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92 See Recommendation R(94)12 of the Committee of Ministers of the Council of Europe to member states on ‘the independence, competence and role of judges’, adopted on 13 October 1994, Principle III, paragraph 1(b), as well as Recommendation CM/Rec(2010)12, ‘Judges: independence, competence and responsibility’, adopted by the Committee of Ministers of the Council of Europe on 17 November 2010, and the Annex thereto, paragraphs 53-55.

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93 On the latter aspect, see also Opinion No. 1 (2001) of the Consultative Council of European Judges (CCJE) for the attention of the Committee of Ministers of the Council of Europe on the rules on the independence and irremovability of judges, of 23 November 2001, point 62.

Also according to the 'Report on the Independence of the Judicial System – Part I: The Independence of Judges' of the European Commission for Democracy through Law of the Council of Europe (Venice Commission), of 16 March 2010, '[w]hen determining remuneration, account must be taken of the social conditions in the country' (point 46).

In this regard, the Portuguese Government points out that the adoption of the contested measures was a fundamental choice made by the competent bodies of the Portuguese State, justified by the objective of eliminating the excessive public deficit and by the need for that State to comply with the international obligations arising from the financial assistance received under Union provisions.

See point 68 and footnote 73 of this Opinion.

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97 The Government pointed out that the contested measures were intended, firstly, ultimately to promote the general interest of the community, as defined by the Portuguese State as legislator in accordance with the national Constitution, and, secondly, to ensure a fair and equitable distribution of the burdens entailed by those measures and borne by all officials of State bodies, public sector employees and other public servants.

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OPINION OF THE ADVOCATE GENERAL

H. SAUGMANDSGAARD ØE

from May 18, 2017 (1)

NLCase C-64/16

Associação Sindical dos Juízes Portugueses

in return for

Tribunal de Contas

[request for a preliminary ruling from the Supremo Tribunal Administrativo (Supreme Administrative Court, Portugal)]

“Reference for a preliminary ruling – Second subparagraph of Article 19(1) TEU – Effective judicial protection – Charter of Fundamental Rights of the European Union – Article 47 – Independence of the judiciary – National scheme providing for reduction of salaries in the public sector – “Austerity measures”

I. Introduction

1. The request for a preliminary ruling from the Supremo Tribunal Administrativo (Supreme Administrative Court, Portugal) has been made in proceedings between the Associação Sindical dos Juízes Portugueses (Trade Union of Portuguese Judges; ‘ASJP’) and the Tribunal de Contas (Court of Auditors, Portugal) concerning the reduction in the salaries of the members of that court, which was the result of a law temporarily reducing salaries in the public sector in order to mitigate the effects of the economic crisis in Portugal.

2. The referring court asks whether such a national provision is compatible with the principle of judicial independence, as it follows, in its view, from both the second subparagraph of Article 19(1) TEU(2) as Article 47 of the Charter of Fundamental Rights of the European Union (hereinafter: ‘the Charter’)(3), and from the case-law of the Court of Justice.

3. Before setting out the substantive reasons why I consider that the preliminary question
If the answer to the question is in the negative, I will examine the complaints raised in this case concerning the inadmissibility of the reference for a preliminary ruling and the manifest lack of jurisdiction of this Court.

II. Applicable provisions

A. Union law

4. The main acts of EU law referred to in this case which aimed to reduce the excessive deficit of the Portuguese Republic and to grant it financial assistance are the following:

- Council Decision 2010/288/EU of 2 December 2009 concerning the existence of a excessive deficit in Portugal(4);
- Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism(5);
- Agreement on an economic and financial adjustment programme, better known as the "Memorandum of Understanding", signed on 17 May 2011 by the the Portuguese Government, the European Commission, the International Monetary Fund (hereinafter: 'IMF') and the European Central Bank (hereinafter: 'ECB')(6);
- Council Implementing Decision 2011/344/EU of 30 May 2011 on granting Union financial assistance to Portugal(7), as amended – in particular – by Council Implementing Decision 2012/409/EU of 10 July 2012(8), and by Council Implementing Decision 2014/234/EU of 23 April 2014(9); and
- the Council Recommendation of 18 June 2013 aimed at ending excessive government deficit in Portugal(10).

B. Portuguese law

1. Law No. 75/2014

5. Law No 75/2014, establishing the temporary salary reduction mechanism and the conditions for its reversal (Law No 75/2014 establishing the temporary salary reduction scheme and the conditions for its repeal) of 12 September 2014(11) (hereinafter 'Law No 75/2014') aims, according to Article 1(1) thereof, to determine the temporary application of the salary reduction mechanism in the public sector and to establish the principles to be observed in the event of its repeal.

6. Article 2 of that Act, entitled "Salary reduction", reads as follows:

"1 – The total gross monthly salary of the persons referred to in paragraph 9, if it exceeds EUR 1 500, regardless of whether such persons are performing their duties on that date or, for whatever reason, take up their duties after that date, reduced by:

a) 3.5% of the total amount of salaries exceeding EUR 1,500 and less than EUR 2,000 amounts;

(b) 3.5 % of the amount of EUR 2 000, increased by 16 % of the value of the total salary above EUR 2 000, so that the overall reduction is between 3.5 % and 10 % for salaries equal to or above EUR 2 000 and equal to or below EUR 4 165;

c) 10 % of the total value for salaries exceeding EUR 4 165.

[...]

9 – This Act applies to the officials and persons listed below:

a) the President of the Republic;

(b) the President of the Assembleia da República [Parliament of the Republic];

c) the Prime Minister;

d) the members of the Assembleia da República;

e) the members of the government;

f) the judges of the Tribunal Constitucional [Constitutional Court], the Tribunal de Contas [Court of Auditors] and the Attorney General of the Republic, sitting and standing magistrates of courts, judges and magistrates of administrative courts, tax courts and cantonal courts;

(g) the representatives of the Republic to the autonomous regions;

(h) the members of the assembleias legislativas das regiões autónomas [parliaments of the autonomous regions];

(i) the members of the regional governments;

j) the local elected representatives;

(k) members of other constitutional bodies not mentioned in the preceding paragraphs and members of governing bodies of autonomous administrative authorities, in particular those exercising their functions in conjunction with the Assembleia da República;

l) the members and employees of cabinets, administrative bodies and support services of the officials and bodies referred to in the preceding paragraphs, of the President and Vice-President of the Superior Council of the Judiciary, of the President and Vice-President of the Superior Council of the Administrative and Fiscal Courts, of the President of the Supremo
Tribunal de Justiça [Supreme Court], of the President and the Magistrates of the Tribunal Constitucional [Constitutional Court], of the President of the Supremo Tribunal Administrativo, of the President of the Tribunal de Contas [Court of Auditors], of the Provedor de Justiça [Ombudsman] and of the Attorney General of the Republic;

(m) the military personnel of the Forças Armadas e da Guarda Nacional Republicana (GNR) [Armed Forces and National Republican Guard], including military judges and advisers to the Public Prosecutor's Office, as well as other military forces;

n) the management staff of the departments of the staff of the President and of the Assembleia da República, of other support services of constitutional bodies, of other departments and bodies of the central, regional or local public administration, and staff performing similar functions for remuneration;

(o) managers in public service or persons treated as such, members of executive, deliberative, advisory or supervisory bodies or other statutory bodies of public institutions subject to general or special regulations, of public law legal persons whose independence derives from the fact that they are active in the field of regulation, supervision or control, of public undertakings whose share capital is wholly or mainly owned by the public authorities, of public undertakings whose operation has been awarded to a third party, of

institutions from the regional and municipal business sector, from public foundations and from other public institutions;

(p) employees holding public office in the staff of the President and of the Assembleia da República or in other constitutional bodies, as well as those holding public office in any public law employment relationship, including employees whose legal status is being reclassified or who are on extraordinary leave;

q) employees of public institutions subject to special arrangements and of public law legal persons whose independence derives from their activities in the field of regulation, supervision or control, including [the employees] of independent regulatory authorities;

(r) employees of public undertakings whose share capital is wholly or mainly owned by the government, of public undertakings and institutions of the regional and local business sector;

s) employees and managers of public and private law public foundations and of public institutions not covered by the preceding paragraphs;

t) reserve personnel, early-retirement personnel or personnel at the disposal of the Member States who are not on active duty and who are eligible for financial benefits linked to the salary of personnel on active duty.

[...]

15 – The provisions of this Article shall be binding and shall prevail over any provisions to the contrary, even if they are special or exceptional provisions, and over instruments of collective labour regulations and employment contracts, which may not override or amend these provisions.

[...]."

2. Act No. 159-A/ 2015

7. Lei n° 159-A/2015, Extinção da redução remuneratória na Administração Pública (Law No. 159-A/2015 repealing the salary reduction in the public sector) of 30 December 2015(12) (hereinafter: 'Law No 159-A/2015') has gradually repealed the discount measures of Law No 75/2014 with effect from 1 January 2016.

8. Article 2 of that law provides that "[t]he salary reduction of Law No. 75[/2014] [...] shall be withdrawn in phases in three-monthly steps during 2016 as follows:

a) withdrawal of 40% for salaries paid from 1 January 2016;

b) withdrawal of 60% for salaries paid from 1 April 2016;

c) withdrawal of 80% for salaries paid from 1 July 2016;

d) complete withdrawal of the reduction in salaries paid from 1 October 2016."

III. Main proceedings, preliminary question and procedure before the Court

9. The ASJP, on behalf of some of its members, judges of the Tribunal de Contas (Court of Auditors), a special administrative appeal is lodged seeking annulment of the

administrative decisions taken on the basis of Article 2 of Law No 75/2014, which introduced a temporary reduction in salary for the persons listed in that article who work in the Portuguese public sector, including magistrates(13). The judges represented by that association also request reimbursement of the amounts deducted from their salaries with effect from October 2014, plus statutory default interest, and a declaration that they are entitled to payment of their salaries without that reduction.

10. In support of this action, the ASJP submits that the contested salary reduction measures infringe the 'principle of judicial independence', which is laid down in Article 203 of the Portuguese Constitution(14) and enshrined in both Article 19(1) TEU and Article 47 of the Charter.

11. The Supremo Tribunal Administrativo states in its order for reference that, since the expenditure control measures, embodied in the salary reduction at issue in the main proceedings, were taken in the context of reducing the excessive deficit in Portugal –
regulated and supervised by the institutions of the European Union – followed by financial assistance – granted and governed by legal acts of the Union, there can be little doubt that such measures were taken within the framework of Union law or are at least of European origin.

12. He goes on to point out that the discretionary power which the Portuguese State enjoys, in consultation with the institutions of the Union, in giving concrete form to its budgetary policy intentions does not, however, exempt it from the obligation imposed on it under Article 51(1) of the Charter to comply with the general principles of EU law, including that of judicial independence.

13. In this regard, he notes that the effective protection of the Union's legal order
the rights arising under the second subparagraph of Article 19(1) TEU are guaranteed in the first instance by the national courts and that citizens of the Union have the right, under Article 47 of the Charter, to the independence and impartiality of those courts. According to the referring court, everything indicates that the independence of the courts and tribunals is also guaranteed by guarantees as to the legal status of their members, in particular as regards working conditions, which is why the unilateral and continuous reduction in the salaries of the clients of the applicant in the main proceedings is contested.

14. Consequently, by decision of 7 January 2016, received at the Court on 5 February 2016, the Supremo Tribunal Administrativo decided to stay the proceedings and to refer the following question for a preliminary ruling:

> 'In view of the imperative requirement to eliminate the excessive budget deficit and the financial assistance provided for in provisions [of EU law], must the principle of judicial independence – as it follows from the second subparagraph of Article 19(1) TEU, Article 47 of the [Charter] and the case-law of the Court of Justice – be interpreted as precluding the salary reduction measures to which magistrates in Portugal are subject, on the ground that they have been imposed unilaterally and continuously by other public authorities/bodies, as is apparent from Article 2 of Law No 75[/2014]?'

15. Written observations were submitted by the ASJP, the Portuguese Government and the European Commission. Representatives of the Portuguese Government and the European Commission were present at the hearing on 13 February 2017.

IV. Analysis

16. Before examining the merits of the reference for a preliminary ruling, I would like to draw attention to the fact that two objections have been raised in this case: one objection that the reference is inadmissible and one objection that the Court lacks jurisdiction. As regards the order in which the two objections should be dealt with,

I note that the jurisdiction of the Court should, in principle, be examined first. Nevertheless, it seems to me appropriate in this Opinion to deal first with the admissibility of the reference for a preliminary ruling, since in the present case it raises less complex questions than the examination of the jurisdiction of the Court, and since that examination is more closely linked to the provisions whose interpretation is sought, that is to say to the substantive analysis, which follows immediately thereafter.

A. Admissibility of the request for a preliminary ruling

17. The Portuguese Government and the Commission have raised two types of complaint which are capable of affecting the admissibility of this reference for a preliminary ruling. The first concerns the imprecise reasoning of the order for reference, the second the fact that the national measures contested in the main proceedings had already been withdrawn at the time the case was brought before the Court.

1. Gaps in the referral decision

18. In its written and oral observations, the Commission first argues that the order for reference is defective, in particular since it neither clearly indicates which case-law of the Court is relevant for the interpretation of the provisions of EU law referred to in the question referred for a preliminary ruling nor the reasons why it selected those provisions(15), and that it follows that the Court must declare that it has no jurisdiction to answer that question.

19. However, I am of the opinion that the complaints thus raised against the content of the The order for reference may affect the admissibility of the reference for a preliminary ruling rather than the jurisdiction of the Court.(16)

20. It is indeed essential, as the Commission points out, that the referring court formulates its request clearly and precisely, since that document constitutes the sole basis for the proceedings before the Court, both for the Court itself and for the participants in the proceedings.(17) The substantive requirements which the request for a preliminary ruling must satisfy are explicitly set out in Article 94 of the Rules of Procedure of the Court of Justice, of which the referring court is expected, in the context of the cooperation established by Article 267 TFEU, to be aware and which it must scrupulously observe. It is particularly necessary for the national courts to set out, in the order for reference itself, the legal context of the main proceedings and to make clear not only the reasons for choosing the provisions of EU law whose interpretation is sought but also the relationship between those provisions and the national legislation applicable to the dispute.(18)

21. In the present case, the reasoning of the decision to refer is particularly short, particularly from two important perspectives, so that one may wonder whether the request for a preliminary ruling it contains is admissible.

22. First, as regards the relationship between the contested national measures and the provisions whose interpretation is sought in the question referred for a preliminary ruling – namely the second subparagraph of Article 19(1) TEU and Article 47 of the Charter – the referring court is not very clear, since it merely indicates that, in its view, those provisions give rise to a general principle of judicial independence which the measures in question may have infringed,(19) without providing further details.

23. Secondly, the question referred for a preliminary ruling refers to the ‘case-law of the Court of Justice’ from which this principle of judicial independence is also said to derive, but the grounds for the order for reference do not cite any decision of that Court to that effect. The referring court merely relies on the existence of ‘numerous [...] judgments’ of the Court concerning the concept of ‘court or tribunal’ within the meaning of Article 267 TFEU in which the independence of the body which had requested a preliminary ruling was taken into account, without however also

but to mention one of those – according to him relevant – judgments. In the absence of adequate information, I do not think it is necessary to rule on this aspect of the question submitted to the Court.

24. Notwithstanding the gaps in the order for reference noted above, it seems to me, in the light of all the information obtained in that order and during the exchange of views, that the Court is nevertheless sufficiently informed to be able to rule on the possible interpretation of Article 19 TEU and Article 47 of the Charter and, therefore, to be able to give a useful answer to the question referred.(20)

2. Withdrawal of the contested measure before the Court

25. In its written observations, the Portuguese Government argued that the request for a preliminary ruling was inadmissible because, at the time it was brought before the Court, it had become devoid of purpose owing to changes in Portuguese national legislation which, in the course of 2016, led in stages to the full restoration of the salary rights at issue in the main proceedings. That Government concluded from this that the Court no longer needed to answer the question referred to it, since it had become hypothetical.(21)

26. At the hearing, the Government confirmed that the salary reduction in the public sector resulting from Law No 75/2014 was phased in by Law No 159-A/2015 between 1 January and 1 October 2016(22) in its entirety – but without retroactive effect. It follows that the loss which the persons represented by the applicant in the main proceedings claim to have suffered as a result of the salary reduction with effect from October 2014 continued into the past and until 1 October 2016, on which date the salaries of all persons employed in the public sector to whom that reduction had applied were restored to their previous level.

27. The Portuguese Government, however, argued that the question referred for a preliminary ruling concerned the alleged infringement of judicial independence caused by Law No 75/2014, a potential problem that had already been resolved at the time of the referral to the Court on 5 February 2016 by the repeal of the effects of that law by Law No 159-A/2015, adopted on 30 December 2015 and entering into force on 1 January 2016. It added that the effects of Law No 75/2014 prior to its repeal, as relied on by the ASJP, were exclusively of a property-law nature and that, in its view, that problem did not form part of the subject-matter of the request for a preliminary ruling.

28. In this regard, I would like to point out that there is a presumption of relevance to the questions concerning the interpretation of EU law given by the national court within the factual and legal context which it is its own responsibility to establish, the correctness of which is not for the Court to verify. The Court may reject a request from a national court only where it is clear that the interpretation of EU law sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical and where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it. (23)

29. According to settled case-law, it is clear from both the wording and the scheme of Article 267 TFEU that the preliminary ruling procedure presupposes that a dispute is actually pending before the national court, in the context of which it must give a ruling taking into account the preliminary ruling. (24) Consequently, where the main proceedings had already ceased to have a purpose at the time when the referring court referred the case to the Court, the Court declared the request for a preliminary ruling inadmissible, (25) whereas a declaration that there is no need to adjudicate is in principle reserved for cases in which the relevant incident or event occurred in the course of the proceedings before the Court. (26)

30. In particular, the Court shall not rule on a request for a preliminary ruling if the national provisions initially applicable to the main proceedings have been repealed or not

longer apply because of their unconstitutionality.(27) However, the Court has held that the fact that an amendment to the national legislation concerned was imminent does not affect the admissibility of the request for a preliminary ruling if it is apparent from the information contained in the request that an answer from the Court to the questions referred will determine the outcome of the main proceedings.(28)

31. In the present case, I consider that it is not clear from the information submitted to the Court that the interpretation of EU law sought is unrelated to the subject matter of the main proceedings or that the issue raised is hypothetical in nature.

32. Contrary to what the Portuguese Government argues, the dispute before the referring court does not concern judicial independence as such, since the principle of judicial independence was invoked solely as a plea in support of the application for annulment of the allegedly unlawful administrative decisions reducing the salaries of the persons represented by ASJP and for reimbursement of the amounts wrongly withheld from their salaries under Law No 75/2014.

33. Furthermore, since Law No 159-A/2015, which amended Law No 75/2014, had not, at the date on which the request for a preliminary ruling was lodged, (29) reversed the contested salary reductions either in the past or immediately, in their entirety, it appears that, as at that date, there was still an obligation on the referring court – which considered it possible that the national legislation at issue infringed EU law – to rule on the subject-matter of the action and, consequently, a need for the Court to answer the question referred for a preliminary ruling.

34. In view of the foregoing, I consider that this request for a preliminary ruling is admissible.

B. Jurisdiction of the Court

35. In support of its action in the main proceedings, the applicant in the main proceedings alleges that the contested administrative decisions are unlawful, on the ground that the national legislation implementing them, namely Law No 75/2014, is not consistent with EU law, since it infringes the 'principle of judicial independence' as it follows, according to that party, from both the second subparagraph of Article 19(1) TEU and Article 47 of the Charter. The referring court adopts this common approach to both provisions not only in the wording of the question referred for a preliminary ruling but also in the grounds for that question.

36. In order to rule on the objections of lack of jurisdiction raised by the Portuguese Government and the Commission, I consider that an independent analysis of the second subparagraph of Article 19(1) TEU is necessary, separate from that of Article 47 of the Charter, since the criteria for the applicability of those provisions and, therefore, for the question whether the Court has jurisdiction to interpret them, are, in my view, different.

1. Article 19, paragraph 1, second subparagraph, TEU

37. In their written and oral observations, the Portuguese Government and the Commission have not explicitly stated the reasons why, in their view, the Court would not have jurisdiction to rule on the separate interpretation of Article 19 TEU. In fact, they argued at length that the national legislation at issue in the main proceedings does not constitute a measure implementing Union law within the meaning of Article 51 of the Charter, from which, in their view, it follows that there is no need to interpret Article 47 of the Charter, and it seems to me that they have proposed similar reasoning in relation to Article 19 TEU.(30)

38. However, I consider that an extensive interpretation – or even an interpretation by analogy – is not possible in this regard, given the specific wording of Article 19 TEU, which differs from that of Article 51(1) of the Charter, to which provision I shall return later(31), but which I have already referred to

point out that it limits the scope of the Charter to measures of the Member States implementing provisions of Union law.

39. Without prejudging the substantive analysis, which will examine the content and scope of Article 19 TEU(32) will be determined in more detail, it must now be determined whether the Court has jurisdiction in the present case to interpret that article by reason of the possible applicability – in a context such as that in the main proceedings – of its provisions and, in particular, of the second subparagraph of paragraph 1 thereof, to which the question referred for a preliminary ruling refers.

40. Under that second paragraph, 'Member States shall provide remedies sufficient *to ensure effective legal protection in the fields covered by Union law'.(33)* That last phrase, which is characteristic of that provision, is, in my view, decisive for assessing whether the Court has jurisdiction to interpret it in the present case.

41. In my view, the effective judicial protection with access to adequate remedies to which individuals must be able to rely under this paragraph is required of the Member States when national courts exercise their judicial activity in areas covered by EU law,
that is to say, as European courts. I consider that this may be the case for courts dealing with the system at issue in the main proceedings, since they may be required to decide disputes to which EU law applies and for which the possibility of having recourse to such
remedies must be guaranteed.

42. That finding is, in my view, sufficient to hold that the Court has jurisdiction in the present case to interpret the second subparagraph of Article 19(1) TEU. That jurisdiction must now be demonstrated for the interpretation of Article 47 of the Charter, as requested, since the criteria for the application of that plea are not formulated in the same way as those for the application of Article 19 TEU, even if those different criteria may lead to the same result.

2. Article 47 of the Charter

43. According to settled case-law, the fundamental rights guaranteed within the EU legal order, including the 'right to an effective remedy and to a fair trial', enshrined in Article 47 of the Charter, are applicable in all situations governed by EU law, but not outside them. (34) Thus, Article 51(1) of the Charter provides that the provisions of the Charter are addressed to the Member States only 'when they are implementing Union law', in accordance with the Court's case-law on that concept. (35) Article 6(1) TEU, which confers binding force on the Charter, provides, like Article 51(2) of the Charter, that the provisions of the Charter shall in no way extend the competences of the Union as defined in the Treaties. Consequently, where a legal situation does not fall within the scope of EU law, the Court has
no jurisdiction to hear it and any provisions of the Charter which may be relied upon cannot in themselves constitute a basis for such jurisdiction.(36)

44. In the present case, both the Portuguese Government and the Commission argue that the requirements are not met the conditions under which it could be concluded that the adoption and implementation by the Portuguese Republic of the measures pursuant to Article 2 of Law No 75/2014 implements EU law within the meaning of Article 51 of the Charter and that, therefore, the Court manifestly lacks jurisdiction to interpret Article 47 of the Charter.

45. I recall that the Court apparently declared itself incompetent to answer the substantive question to previous requests for a preliminary ruling, also submitted by Portuguese courts, on the ground that the order for reference did not contain any specific information allowing it to be assumed that the national measures at issue in those cases, which are comparable to those at issue in the main proceedings(37), were intended to implement EU law within the meaning of the aforementioned Article 51(38).

Unlike in those cases, however, in this case there does not appear to be any *obvious* lack of jurisdiction, since

the referring court has provided more explicit indications, albeit brief ones, which suggest that the present case involves the implementation of EU law.

46. The referring court explains that the salary reduction measures referred to in Article 2 of Law No 75/2014 are justified by compelling reasons of budgetary consolidation; it then lists a series of measures of EU law concerning the excessive public deficit of the Portuguese State and the financial assistance granted to that Member State. (39) Nevertheless, it is not easy to identify the reasons why that court considers that there is a direct link between the measures at issue in the main proceedings and one or other provision of EU law, since it does not elaborate on this point . (40)

47. Thus, the referring court does not specify the legal framework – as regards the provisions of EU law applicable at the time – within which the contested national measures were adopted. In particular, it does not draw a clear distinction, as the Portuguese Government emphasised at the hearing, between, on the one hand, the stage at which the Portuguese State was bound by EU law rules relating to the reduction of an excessive deficit and, on the other hand, the stage at which the scheme containing the obligations arising from the granting of financial assistance by the Union became applicable.
was.

48. As Advocate General Bot pointed out in another case concerning austerity measures taken by a Member State in the context of obligations entered into with the European Community, in order to determine whether the provisions of the Charter are applicable from the perspective of Article 51 thereof(41) – not only the wording of the national provisions in question but also the content of the EU law instruments in which those obligations are laid down. In that regard, he has also rightly pointed out that it is of little relevance that those instruments give the Member State concerned scope for manoeuvre as regards the measures best suited to ensuring compliance with those obligations, since the relevant provisions concern objectives which – unlike mere recommendations addressed by the Council on the basis of Article 126 TFEU to Member States whose government deficit is deemed to be excessive – are sufficiently detailed and precise to constitute specific EU law provisions in that regard.(42)

49. In the present case, the referring court does not rely on the wording of Law No 75/2014 to characterise the relationship between that law and EU law. Indeed, that law does not refer anywhere to an act of EU law, unlike the explanatory memorandum to the draft law which led to its adoption, which demonstrates the relationship with budgetary obligations arising from EU law.(43)

50. By contrast, the referring court, like the ASJP, relies in particular on the agreement on an economic and financial adjustment programme concluded by the Portuguese State in May 2011(44) and, lastly, on Council Implementing Decision 2012/409 of 10 July 2012 granting Union financial assistance to Portugal, as well as on the Council Recommendation of 18 June 2013 with a view to putting an end to the excessive government deficit in Portugal.

51. In that regard, I would point out that, by their very nature, recommendations of the EU institutions – unlike decisions – are not binding acts. (45) Furthermore, I agree with the Portuguese Government (46) and the Commission that the abovementioned recommendation, which is based in particular on Article 126(7) TFEU, does not contain sufficiently specific and precise objectives to allow the Portuguese State to be considered to have implemented requirements of EU law within the meaning of Article 51 of the Charter by virtue of that recommendation.

52. As regards Implementing Decision 2012/409, mentioned by the referring court, I would point out that it was replaced by Council Implementing Decision 2014/234 of 23 April 2014, which was therefore applicable ratione temporis at the time when the contested measures were adopted pursuant to Law No 75/2014, adopted on 12 September 2014. Article 1 of the latter decision amended Implementing Decision 2011/344, which initially laid down the conditions for the grant of financial assistance

assistance to the Portuguese Republic by the Union in line with Regulation No 407/2010. (47) It is apparent from paragraph 2 of that article that the Portuguese State was required to take specific measures in the course of 2014, 'in line with the provisions of the Memorandum of Understanding', and not merely general ones, (48) which, in the context of 'the 2015 consolidation strategy', included in particular 'the Government developing in 2014 a single salary scale, to be introduced in 2015, aimed at rationalising and ensuring consistency in remuneration policies for all careers in the public sector'. (49) The discretion which that Member State certainly enjoyed in the exercise of its budgetary powers to determine which precise economic corrective measures it considered most appropriate for achieving the objectives thus prescribed does not affect that analysis. (50)

53. Although serious doubts may arise from the fact that the order for reference is not very clear on this issue, I am nevertheless inclined to take the view that the adoption of measures to reduce salaries in the public sector under Article 2 of Law No 75/2014, which is at issue in the main proceedings, implements provisions of EU law within the meaning of Article 51 of the Charter and that, consequently, the Court has jurisdiction to answer the request for a preliminary ruling also in so far as it concerns Article 47 of the Charter.

C. On the merits

1. Subject of the preliminary question

54. In support of its claims, the ASJP argues that the legal position of sitting magistrates should not be confused with the legal position of government officials in general, who find themselves in a more uncertain situation. Relying on, inter alia,
(51) the European Charter on the Statute for Judges(52) adopted under the auspices of the Council of Europe, it states that the stability of the remuneration of serving judges and its setting at a level which is resistant to attempts from outside to influence their decisions makes it possible to comply, in particular, with the principles of independence and impartiality, which are safeguards for judicial activity. It argues that the principle of judicial independence, in particular in financial terms, which derives from Article 19 TEU and Article 47 of the Charter, precludes decisions to reduce salaries, such as those at issue in the main proceedings, which are taken unilaterally by the executive and legislative authorities of a Member State.

55. In the same vein, the Court is essentially asked in the order for reference to determine whether There is a general principle of EU law requiring the authorities of the Member States to respect the independence of national courts and, as regards the circumstances of the main proceedings, more specifically to leave their salaries intact at a level sufficient to enable them to perform their duties freely.

56. The referring court considers that such a principle and such consequences flow from both the second subparagraph of Article 19(1) TEU and Article 47 of the Charter, (53) which provisions the Court will, in my view, have to interpret separately (54) if it considers that it has jurisdiction to interpret them. (55) Like the Portuguese Government and the Commission, I do not share the referring court's substantive position for the reasons set out below.

2. Interpretation of the second subparagraph of Article 19(1) TEU

57. In support of their argument that the second subparagraph of Article 19(1) TEU expresses a general principle of EU law which affirms judicial independence and which precludes the national measures at issue in the main proceedings, the referring court and the ASJP argue that, from a functional point of view, the courts sitting in the Member States are also European courts, since, in particular by virtue of that provision, they primarily ensure the effective protection of the rights arising from the EU legal order.

58. Although the second subparagraph of Article 19(1) TEU provides that 'Member States shall provide remedies sufficient to ensure *effective judicial protection* in the fields covered by Union law', (56) and the magistrates of the national courts responsible for that purpose contribute to such judicial protection, the fact remains that the interpretation of the wording of that provision requires that it be examined in its context.

59. In that context, I would point out that Article 19 TEU is included in Title III of that Treaty, entitled 'Provisions governing the institutions', which lays down a number of general rules concerning the framework conditions within which the various institutions of the European Union –
and in particular the Court of Justice of the European Union referred to in the aforementioned Article 19 – exercise the powers conferred on them.

60. Furthermore, in the light of the provisions of paragraphs 1 to 3 of Article 19 TEU, it seems to me that the aforementioned concept of 'effective judicial protection' was developed in close connection with the exercise of the functions of the Court of Justice of the European Union:
the first three paragraphs are devoted to its composition and powers. In particular, the first subparagraph of paragraph 1 confers on that institution, which consists of both the Court of Justice and the General Court, the task of ensuring that in the interpretation and application of the Treaties the law is observed, (57) it being noted that there are exceptions to the 'rule of general jurisdiction' laid down in that paragraph. (58)

61. It follows from case law that the second paragraph of the aforementioned paragraph 1 once again sets out the obligation of the Member States confirm that they must 'provide a system of remedies and procedures capable of ensuring respect for the fundamental right to effective judicial protection'.(59) This second paragraph is therefore not directly aimed at national courts, but is intended to ensure that remedies exist in the Member States so that every individual can enjoy such protection in all areas where EU law applies. This requirement is linked to the fact that judicial review of compliance with the legal order of the European Union is ensured not only by its own courts but also, by virtue of the two subparagraphs of the aforementioned paragraph, in cooperation with national courts.(60)

62. The Court has emphasised that that obligation also follows from Article 47 of the Charter with regard to measures taken by the Member States for the implementation of EU law within the meaning of Article 51(1) of the Charter. (61) The first paragraph of Article 47 expressly grants everyone whose rights and freedoms guaranteed by EU law are violated the right to an effective remedy before a tribunal, in compliance with the conditions laid down in that article.

Without prejudging the interpretation of that article and its possible consequences with regard to the facts of the main proceedings,(62) I would point out at this stage that the purpose and content of Article 47 are different from those of Article 19 TEU.

63. As regards Article 19 TEU, the Court has held that it is a matter for the domestic law of each Member State to designate, in compliance with the requirements laid down in particular in the second subparagraph of paragraph 1 thereof, the courts or tribunals having jurisdiction and to lay down the detailed rules of procedure for actions for the protection of the rights which individuals derive from EU law. (63) It seems to me that the purpose of that subparagraph, which requires Member States to provide the remedies necessary to protect those rights effectively, is primarily procedural.

64. In the light of the foregoing, I agree with the Portuguese Government(64) that the concept of 'effective judicial protection' within the meaning of the second subparagraph of Article 19(1) TEU should not be confused with the 'principle of judicial independence' referred to in the question referred and which is said to flow from that provision.(65)

65. Furthermore, it seems to me that the difference between, on the one hand, the right to effective judicial protection, which must be guaranteed to the individuals of the Member States by means of adequate legal remedies, and, on the other hand, the right to a trial by judges who exercise justice in a completely independent manner, which is also recognised in the interests of those individuals, is clear, having regard to both the title and the wording of Article 47 of the Charter, which distinguishes between the two rights.(66) The distinction is made

This is also made clear in the European Convention on Human Rights and Fundamental Freedoms(67), since the 'right to an effective remedy' before a national authority is provided for in Article 13 thereof, while the '[r]ight to a fair trial', including in particular the right of everyone 'to have his case heard by an independent tribunal', is set out in Article 6 thereof(68), even though the two articles are clearly materially linked(69). I will return to this when interpreting Article 47 of the Charter.(70)

66. In my view, the obligation imposed on Member States by the second subparagraph of Article 19(1) TEU to provide for a system of 'remedies' is linked only to the right to 'effective judicial protection', as is clear from the wording of that provision, and not to the right to a fair trial before an independent tribunal, which has a substantially different content.

67. Consequently, I consider that the second paragraph must be interpreted as not establishing a general principle of EU law requiring the independence of the judges of all courts of the Member States to be guaranteed.

68. If the Court were to hold that the principle of judicial independence flows directly from the requirement of effective judicial protection laid down in the second subparagraph of Article 19(1) TEU, as the referring court considers, I would consider, in the alternative, in any event that neither that provision nor that principle(71) can be understood as precluding national measures reducing salaries such as those contested by the applicant in the main proceedings, since they are in no way specifically aimed at judges but, on the contrary, are of general application(72) since they apply to a large group of persons employed within the public sector.(73)

3. Interpretation of Article 47 of the Charter

69. Like the ASJP, the referring court submits that, under Article 47 of the Charter, the courts of the Member States must provide effective judicial protection of the rights conferred on citizens by the EU legal order in an independent and impartial manner and that the unilateral salary reduction at issue in the main proceedings may have undermined the independence of the judges concerned.

70. In this regard, I would recall – as Advocate General Wathelet recently explained(74) – that the Charter, as is apparent from its title(75) and the wording of Article 47 thereof, recognises, on the one hand, the right to an effective remedy, which is also enshrined in Article 13 of the ECHR, and, on the other hand, the right to a fair trial, including the right of access to an independent and impartial tribunal, which is enshrined in Article 6(1) of the ECHR.

71. Since the content of the aforementioned Article 47 is directly inspired by those provisions of the ECHR,(76) Article 52(3) of the Charter requires it to be interpreted not only in the light of the explanations to the Charter but also in the light of the case-law of the European Court of Human Rights ('the ECtHR')(77), so that the rights guaranteed by Article 47 have in principle the same meaning and scope as those granted by the ECHR, although that rule does not prevent EU law from providing more extensive protection. It has been pointed out from the outset(78) that the protection afforded by Article 47 of the Charter provides protection whose substantive scope is broader than that of the corresponding articles of the ECHR.(79)

72. In the light of the case-law relating to the ECHR and the Protocols annexed thereto,(80) it seems to me that the 'principle of judicial independence' referred to in this request for a preliminary ruling falls within the right of '[e]very person to have his case heard by an independent and impartial tribunal' under the second paragraph of Article 47 of the Charter,(81) rather than within the 'right to an effective remedy' provided for in the first paragraph of that article.(82)

73. Both the referring court and the ASJP submit that the principle of judicial independence 'may preclude the salary reduction measures to which magistrates in Portugal are subject, on the grounds that they have been imposed unilaterally and continuously by other public authorities/bodies'.(83)

74. The ECtHR has repeatedly held that the guarantee of an "independent tribunal" within the meaning of Article 6(1) of the ECHR(84) not only requires that judges be independent in their legal position(85) but also in the exercise of their functions. The latter has an internal dimension within the judiciary (86), which is not at issue in this case, as well as an external dimension beyond it, which implies that judges must be able to do their work without being influenced by the parties to the proceedings(87) or by the other powers within the State,(88) which, in my view, is the only approach advanced by the ASJP. I would stress that the Court has adopted a similar approach when establishing the criteria for assessing whether a national court is independent.(89)

75. As regards, more specifically, the independence of members of a judicial body from the point of view of their remuneration, the ECtHR has accepted the interdependence between the two by holding that 'the failure to pay judges their remuneration in a timely manner is incompatible with the need to ensure that they are able to exercise their judicial functions independently and impartially, resistant to external pressures aimed at influencing their decisions and conduct', emphasising in this regard that 'judicial independence is a sensitive issue'.(90)

76. This analysis is based on several Council of Europe legal instruments which mention such concerns. Article 6 of the European Charter on the Statute for Judges, which has no binding effect, states that the remuneration of judges must be set at a level which ensures that they are not exposed to any pressure which could undermine their independence, even though the level of such remuneration may vary from one judge to another on the basis of objective criteria, such as the importance of the duties assigned to them.(91) Furthermore, recommendations of the Committee of Ministers(92) have urged that '[t]he remuneration of judges should be proportionate to their role and responsibilities and at a level which enables them to withstand any external pressure which may influence their decisions' and that '[s]pecific legal provisions should be adopted to make it impossible to make reductions in the salary of judges specifically targeted'.(93)

77. In the light of the foregoing, I consider that the right of everyone to have his case heard by an independent tribunal, within the meaning of Article 47 of the Charter, requires that the independence of the members of that tribunal be guaranteed by providing them, having regard to the responsibilities they bear, with a remuneration that is sufficiently high and stable to protect them from any risk of external interference or pressure prejudicial to the neutrality of the judicial decisions which they are called upon to take.

78. While the level of remuneration of judges must be consistent with the importance of the public function which they perform, that amount must not be disproportionate to economic and social reality and, in particular, to the average standard of living in the State in which the persons concerned perform their duties.(94) Furthermore, reasonable stability of their income means, in my view, that it must not vary over time to such an extent as to jeopardise the independence of their judgment, but not that any change is ruled out.

79. More specifically, in a period of serious economic crisis such as that which prevailed in the period preceding the adoption of the measures at issue in the main proceedings, (95) the principle of judicial independence cannot be understood as precluding a reduction in the remuneration of judges, even though such a reduction must of course remain within reasonable proportions in order to avoid making them susceptible to any pressure that may be brought to bear on them. A fair balance must be struck, as the Portuguese Government submits, between the general interest of the Community and the particular interest of the judges, who are responsible for ensuring that the rights conferred on individuals are respected.

80. Moreover, the contested discount measures – as I(96) as the Portuguese Government(97) and the Commission have already emphasised – does not concern only sitting magistrates but a large number of people working in the public sector. Since the measures were by no means aimed exclusively or even specifically at judges, it cannot be assumed that the 'other public authorities/bodies' mentioned in the question referred would have attempted to unbalance members of the judiciary, especially since members of both the legislature and the executive were affected by exactly the same austerity measures under Article 2 of Law No 75/2014.

81. Consequently, I consider that Article 47 of the Charter should be interpreted as meaning that does not oppose the adoption of national measures such as those contested in the main proceedings, since they do not infringe the principle of judicial independence laid down in that article.

82. A contrary interpretation would in practice have the consequence, in my view regrettable, that in the event of a serious economic crisis the Member States would be deprived of the possibility of a necessary – not exclusively concerning judges and not disproportionate – intervention in the salaries of persons who are part of the public sector in the broad sense.

V. Conclusion

83. In the light of the foregoing, I propose that the Court answer the question referred for a preliminary ruling by the Supremo Tribunal Administrativo as follows:

> "The second subparagraph of Article 19(1) TEU and Article 47 of the Charter of Fundamental Rights of the European Union must be interpreted as not precluding general measures to reduce salaries in the public sector to which judges are subject under national legislation such as that at issue in the main proceedings."

Original language: French.

Article 19 TEU reads as follows: '1.

The Court of Justice of the European Union shall comprise the Court of Justice, the General Court and specialised courts. It shall ensure that in the interpretation and application of the Treaties the law is observed.

Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law.

The Court of Justice shall consist of one judge from each Member State. It shall be assisted by Advocates-General. [...]

The Court of Justice of the European Union shall give judgment in accordance with the Treaties [...]."

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3 Article 47 of the Charter, entitled 'Right to an effective remedy and to a fair trial', provides in its first and second paragraphs: 'Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone has the right to a fair and public hearing within a reasonable time,

by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented."

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4 OJ 2010, L 125, p. 44 and corrigendum OJ 2014, L 106, p. 46.

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5 OJ 2010, L 118, p. 1.

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6 The original English document can be found at the following web address: https://www.imf.org/external/np/loi/2011/prt/051711.pdf.

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7 OJ 2011, L 159, p. 88.

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8 OJ 2012, L 192, p. 12.

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9 OJ 2014, L 125, p. 75.

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10 Original English document: Council recommendation with a view to bringing an end to the situation of an excessive government deficit in Portugal, June 18, 2013, 10562/13.

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11 *Diário da República,* 1st series, No. 176 of 12 September 2014, p. 4896. Draft Law No. 239/XII, approved by the Council of Ministers on 3 July 2014 and which led to Law No. 75/2014, can be consulted at the following address: https://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheDiplomaAprovado.aspx?BID=18267.

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12 *Diário da República,* 1st series, no. 254 of December 30, 2015, p. 10006-(4). The text of Law No. 159-A/2015 can also be consulted at the following web address: http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheDiplomaAprovado.aspx?BID=19068.

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13 As regards that category, see the list in the aforementioned Article 2, paragraph 9, point (f).

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14 According to Article 203, “the courts shall be independent and subject only to the law”.

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15 The Commission also argues that the referring court does not explain the reasons why the magistrates were affected in particular by a national measure which concerns a large number of office-holders. Since, in my view, this argument concerns substantive EU law rather than procedural rules, I prefer to deal with it in that context (see points 54 et seq. of this Opinion).

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16 Where the order for reference does not contain sufficient information on the legal and factual context of the main proceedings or on the reasons justifying the need for an answer to the questions referred for a preliminary ruling in order to resolve the dispute, the Court will generally declare the request for a preliminary ruling inadmissible, in whole or in part (see, in particular, judgments of 18 July 2013, ÖFAB, C-147/12, EU:C:2013:490, paragraphs 44 to 46, and of 4 May 2016, Philip Morris Brands and Others, C-547/14, EU:C:2016:325, paragraphs 47 to 53, and order of 8 September 2016, Google Ireland and Google Italy, C-322/15, EU:C:2016:672, paragraph 15 et seq.).

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17 The order for reference must provide sufficient information, firstly to the Court, to enable it to give a useful answer to the question referred for a preliminary ruling and, secondly, to all the interested parties designated in Article 23 of the Statute of the Court of Justice of the European Union – and in particular the 28 Member States – to whom the order for reference is served after translation, so that they can submit any observations.

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18 The Court has repeatedly recalled these rules in its case-law (see, in particular, the passages in the judgments referred to in footnote 16 of this Opinion and the case-law cited therein) and in its ‘Recommendations to national courts and tribunals on the initiation of preliminary ruling proceedings’, updated in 2016 (OJ 2016 C 439, pp. 1 to 8, and in particular paragraphs 14 to 18 and the summary annex ‘Essential elements of a request for a preliminary ruling’). See also Gaudissart, MA, ‘Les recommandations de la Cour de justice aux juridictions nationales, relatives à l'introduction de procédures préjudicielles’, *Journal de droit européen,* 2017 No 2, p. 42 et seq.

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19 With regard to the reasoning of the referral decision, see points 11 et seq. of this Opinion.

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20 See, by analogy, judgments of 12 February 2015, Surgicare (C-662/13, EU:C:2015:89, paragraphs 16 to 23), and of 11 June 2015, Lisboagás GDL (C-256/14, EU:C:2015:387, paragraphs 24 to 27).

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21 The Portuguese Government has put forward these arguments in the alternative, in the event that the Court were to declare itself competent to rule on the request for a preliminary ruling.

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22 See points 7 and 8 of this Opinion.

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23 See, in particular, judgments of 8 December 2016, Eurosaneamientos and Others (C-532/15 and C-538/15, EU:C:2016:932, paragraph 28), and of 21 December 2016, Associazione Italia Nostra Onlus (C-444/15, EU:C:2016:978, paragraph 36).

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24 See, in particular, judgment of 26 February 2015, Matei (C-143/13, EU:C:2015:127, paragraph 38), and order of 3 March 2016, Euro Bank (C-537/15, not published, EU:C:2016:143, paragraph 32).

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25 See, in particular, order of the Court of 10 February 2015, Liivimaa Lihaveis (C-175/13, not published, EU:C:2015:80, paragraphs 17 to 21).

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26 See, in particular, judgments of 24 October 2013, Stoilov i Ko (C-180/12, EU:C:2013:693, paragraphs 44 to 48), and of 3 July 2014, Da Silva (C-189/13, not published, EU:C:2014:2043, paragraphs 34 to 37).

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27 See, in particular, judgments of 9 December 2010, Fluxys (C-241/09, EU:C:2010:753, paragraphs 32 to 34), of 27 June 2013, Di Donna (C-492/11, EU:C:2013:428, paragraphs 27 to 32), and order of 3 March 2016, Euro Bank (C-537/15, not published, EU:C:2016:143, paragraphs 34 to 36).

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28 See judgment of 12 January 2010, Petersen (C-341/08, EU:C:2010:4, paragraphs 28 and 29).

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29 I would point out once again that the request for a preliminary ruling was registered on 5 February 2016 and that, although Law No 159-A/2015 entered into force on 1 January 2016, it did not have retroactive effect and was initially only partially implemented (the reduction was 40% for salaries from 1 January 2016, 60% for salaries from 1 April 2016 and 80% for salaries from 1 July 2016), and was only fully implemented with effect from 1 October 2016 (see points 7 and 8 and 26 and 27 of this Opinion). The loss of income claimed by the persons represented by the applicant in the main proceedings had therefore not been fully compensated at the date of the referral to the Court.

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30 The Portuguese Government has inferred from the case-law on Article 51 of the Charter that the Court clearly lacks jurisdiction to rule on the interpretation of both Article 19 TEU and Article 47 of the Charter. The Commission, for its part, has based the Court's lack of jurisdiction to answer the question referred for a preliminary ruling from the perspective of Article 19 TEU in particular on the fact that the referring court had failed to provide sufficient reasons in its order for reference as to the relationship between EU law and the national legislation applicable to the main proceedings (in my view, this complaint concerns rather the admissibility of the request for a preliminary ruling, which was examined in points 18 et seq. of this Opinion).

31 See points 44 et seq. of this Opinion.

32 Let me first point out that I will be arguing for a different interpretation of Article 19 TEU than that of the ASJP (see points 58 et seq. of this Opinion).

33 My italics.

34 In its judgment of 26 February 2013, Åkerberg Fransson (C-617/10, EU:C:2013:105, paragraphs 17 to 23), the Court held, in particular, that since '[t]he fundamental rights guaranteed by the Charter must be respected where national legislation falls within the scope of EU law, ... there cannot be cases in which EU law applies without those fundamental rights being applied. The applicability of EU law implies that the fundamental rights guaranteed by the Charter are applicable.' (paragraph 21). See also judgment of 16 May 2017, Berlioz Investment Fund (C-682/15, EU:C:2017:373, paragraph 49).

35 The Court has emphasised that the concept of 'implementing EU law' within the meaning of Article 51 of the Charter requires that there be some connection between the EU law act and the national measure concerned, which goes beyond the proximity of the matters concerned or the indirect influence of one matter on the other. In that regard, it must be determined, inter alia, whether it is intended to implement a provision of EU law, what the nature of that provision is and whether it does not pursue objectives other than those covered by EU law, even if that provision could indirectly affect that law, and whether there is a provision of EU law specific to that area or capable of affecting it (see, in particular, judgments of 10 July 2014, Julián Hernández and Others, C-198/13, EU:C:2014:2055, paragraph 34 et seq., and of 6 October 2016, Paoletti and Others, C-218/15, EU:C:2016:748, paragraph 14 et seq.).

36 See, in particular, judgment of 8 November 2016, Lesoochranárske zoskupenie VLK (C-243/15, EU:C:2016:838, paragraph 51 et seq.), as well as orders of 14 April 2016, Târÿia (C-328/15, not published, EU:C:2016:273, paragraphs 23 and 24), and of 13 December 2016, Semeraro (C-484/16, not published, EU:C:2016:952, paragraph 43).

37 Namely, legal provisions that implemented a salary cut in the public sector in order to limit government spending in Portugal.

38 See orders of 7 March 2013, Sindicato dos Bancários do Norte and Others (C-128/12, not published, EU:C:2013:149, paragraph 12), of 26 June 2014, Sindicato Nacional dos Profissionais de Seguros e Afins (C-264/12, EU:C:2014:2036, paragraphs 19 et seq.), and 21 October 2014, Sindicato Nacional dos Profissionais de Seguros e Afins (C-665/13, EU:C:2014:2327, paragraph 14).

39 That list includes most of the actions mentioned in point 4 of this Opinion.

40 The referring court refers to an ‘Explanatory Memorandum to the 2011 State Budget’ by the Minister for Finance and Public Administration, which refers to Decision 2010/288 of the Council of the European Union, without specifying whether that decision was taken into account in the legislative history of Law No 75/2014, which is at issue in the main proceedings.

41 See the Opinion of Advocate General Bot in Florescu and Others (C-258/14, EU:C:2016:995, points 61 et seq.).

42 That case concerned, in particular, the Memorandum of Understanding concluded on 23 June 2009 between Romania and the European Community, as well as Council Decision 2009/459/EC of 6 May 2009 providing Community medium-term financial assistance to Romania (OJ 2009 L 150, p. 8).

43 The explanatory memorandum to Bill No 239/XII emphasises that the Portuguese Republic’s membership of the European Union and its accession to the euro area oblige it to comply with strict budgetary conditions, which are set out in the TFEU, in the Protocol to that Treaty and in the regulations implementing the Stability and Growth Pact, as well as in the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union. That memorandum also mentions the possibility of imposing financial sanctions on Member States that exceed the budget deficit reference value. It also refers to the economic adjustment programme agreed with the Commission, the ECB and the IMF. It is added that, since the budgetary discipline imposed by the permanent and unchangeable obligations to which the Portuguese Republic is bound, now that it is part of the European Union and the Eurozone, requires that the total wage bill in the public sector – as an essential part of State expenditure – be kept under control, the bill aims to establish the percentages and limits of the reduction in current salaries from 2011 onwards, while also determining its complete, gradual withdrawal in accordance with the available budgetary margin (see pp. 1-4).

44 I would like to emphasise that this first memorandum of understanding, which has subsequently been amended several times – as the Commission indicates in its observations – provided for a three-year programme for the period ‘until mid-2014’ (see recital 2 of Council Implementing Decision 2011/344).

45 Under the fourth and fifth paragraphs of Article 288 TFEU.

46 The Government refers in particular to judgment No 574 of 14 August 2014 of the Tribunal Constitucional (Constitutional Court, Portugal), delivered to that effect. That court nevertheless points out that certain specific measures may result from the implementing decisions of the Council in the context of the Union's programme of economic and financial assistance to the Portuguese State.

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47 According to paragraph 1 of that Article 1, the financial assistance is to be made available to the Portuguese State for a period of three years and six weeks, starting from the first day after the entry into force of Implementing Decision 2011/344. Since the end of the economic reform programme, that State has been subject to a post-programme surveillance, as the Commission referred to it at the hearing (see on this subject: https://ec.europa.eu/info/businesseconomyeuro/economicandfiscalpolicycoordination/eufinancialassistance/whicheucountrieshavereceivedassistance/financialassistanceportugal_en).

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48 A clear distinction must be made between those measures, which are specifically imposed on a Member State, and the budgetary obligations generally imposed on Member States, and in particular on those belonging to the euro area, in particular under the regulations on the Stability and Growth Pact [see, inter alia, recitals 1 to 5 and Article 1 of Council Regulation (EU) No 1177/2011 of 8 November 2011 amending Regulation (EC) No 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure (OJ 2011 L 306, p. 33)].

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49 See Article 3(8)(h)(i) and (ii) of Implementing Decision 2011/344 as amended by Article 1 of Implementing Decision 2014/234, as well as the fourth indent of recital 11 thereof, which states that '[t]he Public Expenditure Review and the 2014 consolidation strategy are underpinned by a number of key reforms in the public administration', including 'a revision of the salary scale and the development of a single salary supplement scale'.

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50 I consider that the adoption by the Portuguese State of Law No 75/2014 was not an 'autonomous initiative going beyond the discretion conferred and limited by EU law', as the Commission argues, but an act aimed at complying with the specific economic obligations it had assumed in order to receive the financial assistance granted to it.

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51 The ASJP also mentions two evaluation reports on the European judicial systems by the Commission européenne pour l'efficacité de la justice (CEPEJ) (European Commission for the Efficiency of Justice) of the Council of Europe, which can be consulted at the following web address: http://www.coe.int/t/dghl/cooperation/cepej/series/default_fr.asp.

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52 The European Charter on the Statute for Judges, adopted at a meeting on 8-10 July 1998, provides in Article 6, entitled 'Remuneration and social security': '6.1. Judges exercising judicial functions on a professional basis shall be entitled to remuneration sufficient to enable them to withstand pressures designed to influence their decisions and, more generally, their judicial action by undermining their independence and impartiality.

to touch.

6.2. The remuneration may vary according to seniority, the nature of the position to which he or she is professionally appointed or the importance of the tasks assigned, which shall be assessed on the basis of transparent criteria. [...]"

The article-by-article commentary to this Charter provides useful information on its content (available at the following web address: https://wcd.coe.int/ViewDoc.jsp?p=&id=1766477&Site=COE&direct=true#).

I recall that the question referred for a preliminary ruling refers not only to those articles but also to 'the case-law of the Court of Justice', from which the principle of judicial independence also flows, but that the order for reference does not cite any decision of the Court to that effect.

Although it cannot be ruled out that some considerations relating to Article 47 of the Charter may also provide clarification for the interpretation of Article 19 TEU, and vice versa (see, in particular, Opinion of Advocate General Wathelet in Berlioz Investment Fund, C-682/15, EU:C:2017:2, points 38 and 67).

And of course, provided that the request for a preliminary ruling is declared admissible.

My italics.

Article 19, paragraph 2, TEU describes the composition of the Court and the status of its members, while paragraph 3 defines its areas of jurisdiction in terms of the various remedies available to it.

See, in particular, judgment of 19 July 2016, H v Council and Commission (C-455/14 P, EU:C:2016:569, paragraphs 39 and 40) concerning derogations in the field of the common foreign and security policy.

See, in particular, judgments of 3 October 2013, Inuit Tapiriit Kanatami and Others v Parliament and Council (C-583/11 P, EU:C:2013:625, paragraphs 100 and 101), and of 28 April 2015, T & L Sugars and Sidul Açúcares v Commission (C-456/13 P, EU:C:2015:284, paragraphs 49 and 50).

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60 See, in particular, the Opinion of Advocate General Kokott in Inuit Tapiriit Kanatami and Others v Parliament and Council (C-583/11 P, EU:C:2013:21, points 34, 116 and 121); judgments of 3 October 2013, Inuit Tapiriit Kanatami and Others v Parliament and Council (C-583/11 P, EU:C:2013:625, paragraphs 90 and 99), and of 28 April 2015, T & L Sugars and Sidul Açúcares v Commission (C-456/13 P, EU:C:2015:284, paragraph 45), and order of 24 January 2017, Beul v Parliament and Council (C-53/16 P, not published, EU:C:2017:66, paragraphs 18 and 19).

61 See judgment of 28 April 2015, T & L Sugars and Sidul Açúcares v Commission (C-456/13 P, EU:C:2015:284, paragraph 50). See also judgment of 16 May 2017, Berlioz Investment Fund (C-682/15, EU:C:2017:373, paragraph 44).

62 See points 69 et seq. of this Opinion.

63 See in particular judgment of 3 October 2013, Inuit Tapiriit Kanatami and Others v Parliament and Council (C-583/11 P, EU:C:2013:625, paragraph 102 et seq.).

64 The Commission has not, either in its written or in its oral observations – or in the alternative – taken a clear position on the interpretation of the second subparagraph of Article 19(1) TEU.

65 The Portuguese Government rightly emphasises that the principle of effective judicial protection, which aims to guarantee the existence of an appropriate procedure for any individual right or interest protected by law to enforce it in court, must be seen in a completely different perspective than the principle of judicial independence, which guarantees the impartiality of the judicial authority in the face of extrajudicial and unlawful interference in the judicial process

procedure.

66 The title of Article 47 of the Charter distinguishes between the '[r]ight to an effective remedy', to which the first paragraph of that article is devoted, and the '[r]ight to a impartial trial', which implies the right to an 'independent tribunal', as stated in the second paragraph. See also, to that effect, judgment of 8 November 2016, Lesoochranárske zoskupenie VLK (C-243/15, EU:C:2016:838, paragraph 54 et seq.).

67 Convention signed in Rome on 4 November 1950 (hereinafter: 'ECHR').

68 The same distinction is made, moreover, in the Constitution of the Portuguese Republic: 'Access to justice and effective judicial protection' is provided for in Article 20 thereof, while the independence of the judiciary is provided for in Article 203 thereof (cited in footnote 14 of this Opinion).

69 See in particular the judgment of the ECtHR of 26 October 2000 (Kudŷa v. Poland, CE:ECHR:2000:1026JUD003021096, paragraphs 150-156).

70 See points 69 et seq. of this Opinion.

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71 For the specific consequences of the principle of judicial independence in the main proceedings, see also points 77 et seq. of this Opinion.

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72 However, the fact that those measures were only temporary in nature (Law No 75/2014 entered into force as from October 2014, whereas the salary reduction was repealed in its entirety by Law No 159-A/2015 as of 1 October 2016), as the Portuguese Government argues, does not seem to me to be decisive, since any infringement of a general principle of EU law, even if temporary, would be inherently contrary to EU law, although the seriousness of the infringement would clearly be less than in the case of a permanent infringement.

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73 See the long list of persons, including in particular both sitting and standing magistrates, in Article 2, paragraph 9, points (a) ('President of the Republic') to (t) ('reserve staff, staff on early retirement or staff at the disposal of the Court […]') of Law No 75/2014, cited in point 6 of this Opinion.

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74 See Opinion of Advocate General Wathelet in Berlioz Investment Fund (C-682/15, EU:C:2017:2, points 34 et seq.). See also judgment of 16 May 2017, Berlioz Investment Fund (C-682/15, EU:C:2017:373, point 54).

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75 Namely "Right to an effective remedy and to a fair trial".

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76 According to the Explanations relating to the Charter of Fundamental Rights (OJ 2007 C 303, p. 17 et seq.), 'the first paragraph [of Article 47 of the Charter] is based on Article 13 of the ECHR' and 'the second paragraph [corresponds] to Article 6(1) of the ECHR' (see 'Explanation on Article 47', first and third paragraphs).

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77 The fact that reference must be made to Article 47 of the Charter only if the situation at issue is subject to EU law (see judgment of 16 May 2017, Berlioz Investment Fund (C-682/15, EU:C:2017:373, paragraph 54 and the case-law cited) does not preclude the possibility of interpreting that article in the light of the case-law of the ECtHR. See, in particular, judgment of 15 February 2016, N. (C-601/15 PPU, EU:C:2016:84, paragraph 45 et seq.), as well as the examples from the case-law cited by Lebrun, G., 'De l'utilité de l'article 47 de la Charte des droits fondamentaux de l'Union européenne', *Revue trimestrielle des droits de l'homme,* 2016, No. 106, especially pp. 439-445.

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78 See Explanations to the Charter "Explanation on Article 47", second and fourth paragraphs, as well as "Explanation on Article 52", where "Article 47, [second and third paragraphs]" is cited as one of the

“[a]rticles the content of which is the same as that of the corresponding articles of the ECHR, but the scope of which is wider”.

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79 In his Opinion in Berlioz Investment Fund (C-682/15, EU:C:2017:2, point 37), Advocate General Wathelet emphasises that ‘Article 47 of the Charter has a broader material scope.
First of all, this provision applies where “the rights and freedoms guaranteed by Union law have been violated” (whether or not they are included in the Charter), whereas the application of Article 13 ECHR requires a violation of the “rights and freedoms set out in [the ECHR]”. On the other hand, Article 6(1) ECHR limits the right to a fair trial to situations involving the determination of civil rights and
obligations or the determination of the merits of a criminal charge. No such limitation is found in the second paragraph of Article 47 of the Charter” (see also points 61 et seq. of that Opinion).

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80 In the Explanations to the Charter, the ‘Explanation on Article 52’ clarifies that in paragraph 3 of Article 52 ‘[t]he reference to the ECHR applies both to the Convention and to the Protocols annexed to it. The content and scope of the rights guaranteed are determined not only by the text of those instruments but also by the case-law of the [ECtHR] and of the Court of Justice of the European Union. The last sentence of [paragraph 3] is intended to enable the Union to ensure more extensive protection. In any event, the level of protection guaranteed
by the Charter may never be lower than that guaranteed by the ECHR.’

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81 For the sake of clarity, I would point out that the right of access to an independent tribunal within the meaning of Article 47 of the Charter also applies to administrative proceedings, such as those in the main proceedings (see, in particular, Dutheil de la Rochère, J., ‘Charte des droits fondamentaux de l'Union européenne’, *Jurisclasseur Europe,* issue 160, 2010, paragraph 87). As regards proceedings concerning magistrates from the perspective of Article 6(1) ECHR, see ECtHR judgment of 23 June 2016, Baka v. Hungary (CE:ECHR:2016:0623JUD002026112, paragraphs 102 et seq.).

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82 On the ‘right to an effective remedy’ referred to in Article 13 ECHR, see in particular the judgment of the ECtHR of 26 October 2000 (Kudÿa v. Poland, CE:ECHR:2000:1026JUD003021096, paragraph 157).

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83 See the wording of the question referred for a preliminary ruling and the observations of the ASJP, which states that the decisions on the contested reductions were taken and imposed by the executive and legislative authorities without taking into account the fact that the remuneration of judges contributes to their functional independence. On the other hand, it does not dispute that the clients of the applicant in the main proceedings were actually able to make use of the remedies available to them in Portugal: the referring court is the Supremo Tribunal Administrativo.

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84 The conditions of independence and impartiality imposed on national courts are certainly interrelated and are sometimes examined together (see, in particular, the judgment
ECHR of 21 June 2016, Ramos Nunes de Carvalho e Sá v Portugal, CE:ECHR:2016:0621JUD005539113,

point 74). Nevertheless, they remain different concepts, so I will limit my explanation – taking into account the circumstances of the main proceedings – to the first.

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85 The manner in which the members of the court are appointed, the duration of their term of office or their irremovability are taken into account, inter alia (see, in particular, ECtHR judgment of 18 July 2013, Maktouf and Damjanoviÿ v. Bosnia and Herzegovina, CE:ECHR:2013:0718JUD000231208, paragraph 49).

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86 This first aspect requires that every judge must be free from directives or pressure from within the judiciary itself, in particular from colleagues to whom he is administratively or hierarchically subordinate (see, in particular, ECtHR judgment of 6 October 2011, Agrokompleks v. Ukraine, CE:ECHR:2011:1006JUD002346503, paragraph 137).

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87 See, in particular, ECtHR judgment of 18 July 2013, Maktouf and Damjanoviÿ v. Bosnia and Herzegovina (CE:ECHR:2013:0718JUD000231208, paragraph 49).

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88 See, in particular, as regards the legislative branch, ECtHR judgment of 3 September 2013, MC and Others v. Italy (CE:ECHR:2013:0903JUD000537611, paragraph 59), and as regards the executive branch, ECtHR judgment of 21 June 2016, Ramos Nunes de Carvalho e Sá v. Portugal (CE:ECHR:2016:0621JUD005539113, paragraphs 70 and 75).

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89 See, in particular, judgment of 16 February 2017, Margarit Panicello (C-503/15, EU:C:2017:126, paragraph 37 et seq. and the case-law cited).

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90 Judgment of the ECtHR of 26 April 2016, Zoubko and Others v. Ukraine (CE:ECHR:2006:0426JUD000395504, paragraphs 67 and 68), concerning the alleged infringement of Article 1 of the Additional Protocol to the ECHR, which states: ‘Every natural or legal person is entitled to the peaceful enjoyment of his possessions.’

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91 These provisions are cited in footnote 52 of this Opinion.

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92 See Recommendation R(94)12 of the Committee of Ministers of the Council of Europe to member states on ‘the independence, competence and role of judges’, adopted on 13 October 1994, Principle III, paragraph 1(b), as well as Recommendation CM/Rec(2010)12, ‘Judges: independence, competence and responsibility’, adopted by the Committee of Ministers of the Council of Europe on 17 November 2010, and the Annex thereto, paragraphs 53-55.

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93 On the latter aspect, see also Opinion No. 1 (2001) of the Consultative Council of European Judges (CCJE) for the attention of the Committee of Ministers of the Council of Europe on the rules on the independence and irremovability of judges, of 23 November 2001, point 62.

Also according to the 'Report on the Independence of the Judicial System – Part I: The Independence of Judges' of the European Commission for Democracy through Law of the Council of Europe (Venice Commission), of 16 March 2010, '[w]hen determining remuneration, account must be taken of the social conditions in the country' (point 46).

In this regard, the Portuguese Government points out that the adoption of the contested measures was a fundamental choice made by the competent bodies of the Portuguese State, justified by the objective of eliminating the excessive public deficit and by the need for that State to comply with the international obligations arising from the financial assistance received under Union provisions.

See point 68 and footnote 73 of this Opinion.

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97 The Government pointed out that the contested measures were intended, firstly, ultimately to promote the general interest of the community, as defined by the Portuguese State as legislator in accordance with the national Constitution, and, secondly, to ensure a fair and equitable distribution of the burdens entailed by those measures and borne by all officials of State bodies, public sector employees and other public servants.

Respect for human rights

Respect for human rights constitutes an "essential element" of the EU's association agreements with partner countries. The provisions of the EU-Israel Association Agreement state that the Parties establish the association "given the importance they attach...[ ] to the principles of the United Nations Charter, in particular respect for human rights and democracy, which constitute the basis of the association." Article 2 states that "relations between the Parties, as well as all the provisions of the Agreement itself, shall be based on respect for human rights and democratic principles, which guide their internal and international policies and constitute an essential element of this Agreement

forms."

Violation of the so-called “essential elements” clauses allows the EU to terminate or suspend an association agreement in whole or in part, under Article 60 of the Vienna Convention on the Law of Treaties. Article 82 of the association agreement provides that “any Party may denounce the agreement by notifying the other Party”, while Article 79(2) sets out the applicable procedural rules for this procedure.

Third States have a responsibility under international law to prevent genocide and must therefore take all diplomatic, economic and political measures within their power to prevent genocide in Gaza. EU Member States should use their influence and all legitimate means at their disposal to influence Israel to refrain from acts contrary to the Genocide Convention and to end the illegal occupation, as determined by the International Court of Justice, including by revising or suspending trade negotiations and agreements.

Source: statewatch.org

20 Sep 2024

Image ID: 2Y906YW
Image title Brussels, Belgium. 07th Oct, 2024. European Commission president Ursula Von der Leyen pictured during a ceremony to pay tribute to the memory of the victims of last year October 7th attack in Israel, at the Great Synagogue in Brussels, Monday 07 October 2024. The father of Israeli soldier Nimrodi, kidnapped and still held in Gaza, will speak at the ceremony marking the first anniversary. BELGA PHOTO ERIC LALMAND Credit: Belga News Agency/Alamy Live News
Model release NO
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Duration In perpetuity
Additional details Individual Alamy / IFUD of Human Rights